Supreme Court, U.S.
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Case No. 1 Docket No.

Case No. 2 Docket No.

In the United States Supreme Court

Ashok Kashelkar Case No. 1
Petitioner

-against-

Harold Y. MacCartney, Jr et al
Respondents

ASHOK KASHELKAR Case No. 2
Petitioner

-against-

RUBIN & ROTHMAN ; et al
Respondents

Petition For Writ of Certiorari
to the United States Court for the Second Circuit

Appendix A - Conforming to Rule 14.1(f)

Petitioner - Ashok Kashelkar - Pro Se
6 Innington Court,
Spring Valley, NY 10977
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**In the United States Supreme Court**

**Case No. 1**

Ashok Kashelkar

Plaintiff \ Appellant \ Petitioner

-against-

Harold Y. MacCartney, Jr.; Debora J. Dillon; William R. Watson; Bruce Muldoon; MacCartney, MacCartney, Kerrigan & MacCartney; O'Connor, McGuiness, Conte, Doyle, Olsen & Collins; JOHN DOE No.1; JOHN DOE No.2 JANE DOE No.1; JANE DOE No.2

Defendants \ Appellees \ Respondents

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Case No. 2

ASHOK KASHELKAR

Plaintiff \ Appellant \ Petitioner

-against-

RUBIN & ROTHMAN ; JOSEPH LATONA ; ROBIN LONG KEITH ROTHMAN; SCOTT RUMPH; HOUSEHOLD INTERNATIONAL, INC. HOUSEHOLD RECOVERY SERVICES ; JOHN DOE No.1; JOHN DOE No.2 JANE DOE No.1; JANE DOE No.2

Defendants-Appellees \ Respondents

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This submission is by..... Ashok Kashelkar-Pro Se
6 Innington Court
Spring Valley, NY 10977
Tel. (845) 426 2902

**Statement Of Petitioner**

Ashok Kashelkar, petitioner herein respectfully states, that, the within "authorities" have been compiled, in support of this petition. The "authorities" have been used during the District Court as well as Appellate proceedings, in both the cases.

This petition is submitted in conformance with U. S. Supreme Court Rule 12.4, in view of the "substantially same and\or similar" questions presented in the Petition and the issues raised in the lower Court.

This Appendix, is a "combined" Appendix, for the two cases covered by this Petition.

Spring Valley, NY

Dated July 20, 2001

Ashok Kashelkar
Pro Se Petitioner
6 Innington Court
Spring Valley NY 10977
Tel. ( 845) 426 2902

**Following conforms to Supreme Court Rule 14.1(f)**

**United States Constitutional Provisions; United States Statutes; Code Of Federal Regulations; Decisions of the United States Supreme Court; Decisions of U. S. Court Of Appeals; Decisions of U. S. District Courts.**

**New York State Constitutional Provisions, New York State Statutes, New York State Regulations, Citations of Cases adjudicated by New York State Courts, including it's appellate Courts.**

**These Authorities have been used in the Lower Court Proceedings, at different stages**

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**U. S. Constitution**

**Article VI..**

Clause [2] This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

**Amendment 1.** [Religious and political freedom.]

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the

people peaceably to assemble, and to petition the Government for a redress of grievances.

**Amendment 5.**
[Criminal actions–Provisions concerning–Due process of law and just compensation clauses.]

No person shall ..... be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

**U. S. Const- Amendment 6.**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

**U. S. Constitution SEVENTH Amendment** [Trial by jury in civil cases.]

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

**Amendment 8.** [Bail–Punishment. ]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

**Amendment 10.**

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

**US Const-Amendment 13.** (Adopted December 18, 1865)
Sec. 1. [Slavery prohibited.]

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

**Amendment 14.** (Adopted July 28, 1868)
Sec. 1. [Citizenship–Due process of law–Equal protection.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**28 USC APPENDIX - RULES OF CIVIL PROCEDURE**

**Rule 8.** General Rules of Pleading

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends,

unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief the pleader seeks. Relief in the alternative or of several different types may be demanded.

(d) Effect of Failure To Deny. Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

(e) Pleading To Be Concise and Direct; Consistency. (1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required. (2) A party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal, equitable, or maritime grounds. All statements shall be made subject to the obligations set forth in Rule 11.

(f) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice.

**Rule 9.** Pleading Special Matters

(b) Fraud, Mistake, Condition of the Mind. In all averments

of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally.

(d) Official Document or Act. In pleading an official document or official act it is sufficient to aver that the document was issued or the act done in compliance with law.

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it.

(f) Time and Place. For the purpose of testing the sufficiency of a pleading, averments of time and place are material and shall be considered like all other averments of material matter.

(g) Special Damage. When items of special damage are claimed, they shall be specifically stated.

**Rule 10.** Form of Pleadings

(a) Caption; Names of Parties. Every pleading shall contain a caption setting forth the name of the court, the title of the action, the file number, and a designation as in Rule 7(a). In the complaint the title of the action shall include the names of all the parties, but in other pleadings it is sufficient to state the name of the first party on each side with an appropriate indication of other parties.

(b) Paragraphs; Separate Statements. All averments of claim or defense shall be made in numbered paragraphs, the

contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by Reference; Exhibits. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes.

**Rule 11.** Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions

(a) Signature. Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) Representations to Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, -

(1) it is not being presented for any improper purpose,

such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) How Initiated. (A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) Nature of Sanction; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2). (B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) Inapplicability to Discovery. Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.

**Rule 12. Defenses and Objections** - When and How Presented - By Pleading or Motion - Motion for Judgment on the Pleadings

(b) How Presented. Every defense, in law or fact, to a

claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(d) Preliminary Hearings. The defenses specifically enumerated (1)-(7) in subdivision (b) of this rule, whether

made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(f) Motion To Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

**Rule 15.** Amended and Supplemental Pleadings

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served. Otherwise a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

**Rule 16.** Pretrial Conferences; Scheduling; Management

(a) Pretrial Conferences; Objectives. In any action, the court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference

or conferences before trial for such purposes as (1) expediting the disposition of the action; (2) establishing early and continuing control so that the case will not be protracted because of lack of management; (3) discouraging wasteful pretrial activities; (4) improving the quality of the trial through more thorough preparation, and; (5) facilitating the settlement of the case.

(c) Subjects for Consideration at Pretrial Conferences. At any conference under this rule consideration may be given, and the court may take appropriate action, with respect to (1) the formulation and simplification of the issues, including the elimination of frivolous claims or defenses; (2) the necessity or desirability of amendments to the pleadings; (3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence; (4) the avoidance of unnecessary proof and of cumulative evidence, and limitations or restrictions on the use of testimony under Rule 702 of the Federal Rules of Evidence; (5) the appropriateness and timing of summary adjudication under Rule 56;

(16) such other matters as may facilitate the just, speedy, and inexpensive disposition of the action.

**Rule 38.** Jury Trial of Right

(a) Right Preserved. The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate.

(b) Demand. Any party may demand a trial by jury of any

issue triable of right by a jury by (1) serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue, and (2) filing the demand as required by Rule 5(d). Such demand may be indorsed upon a pleading of the party.

**Rule 39.** *Trial by Jury or by the Court*

(a) By Jury. When trial by jury has been demanded as provided in Rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (1) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (2) the court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the Constitution or statutes of the United States.

**Rule 56.** Summary Judgment

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case Not Fully Adjudicated on Motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The

court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

**12 USCS. 38** The National Bank Act

The Act entitled "An Act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof," approved June 3, 1864, shall be known as "The National Bank Act."

**12 USCS. Section 1467a**. Regulations of holding companies

As used in this section, unless the context otherwise requires-
(c) Holding company activities (1) Prohibited activities
Except as otherwise provided in this subsection, no savings and loan holding company and no subsidiary which is not a savings association shall–

(A) engage in any activity or render any service for or on behalf of a savings association subsidiary for the purpose or with the effect of evading any law or regulation applicable to such savings association;

(B) commence any business activity, other than the activities described in paragraph (2); or

(C) continue any business activity, other than the activities described in paragraph (2), after the end of the 2-year period beginning on the date on which such company received approval under subsection (e) of this section to become a savings and loan holding company subject to the limitations contained in this subparagraph.

(4) Prior approval of certain new activities required

(A) In general.... No savings and loan holding company and no subsidiary which is not a savings association shall commence, either de novo or by an acquisition (in whole or in part) of a going concern, any activity described in paragraph (2)(F)(i) of this subsection without the prior approval of the Director.

**Code Of Federal Regulations- Banks and Banking**

**PART 535-PROHIBITED CONSUMER CREDIT**

## PRACTICES

See.
535.1 Definitions. 535.2 Unfair credit practices.
535.3 Unfair or deceptive cosigner practices.
535.4 Late charges. 535.5 State exemptions.

AUTHORITY: See. 18, as added by sec. 202, 88 Stat. 2193, as amended (15 U.S.C. 57a).

Source: 54 FR 49479, Nov. 30, 1989, unless otherwise noted.

### § 535.1 Definitions

(a) Act. For the Purposes of this part, " Act" means the Federal Trade Commission Act, 15 U.S.C. 41 et .seq.
(b) *Consumer*. The term "consumer" means a natural person who seeks or acquires goods, services, or money for personal, family, or household purposes, and who applies for or is extended "consumer credit" as defined in §56l.12 of this chapter.

(g) *Household goods*. The term "household goods" means clothing, furniture, appliances, linens, china, crockery , kitchenware, and personal effects of the consumer and his or her dependents, provided that the following are not included within the scope of the term .'household goods":

(1) Works of art; (2) Electronic entertainment equipment (except one television and one radio); (3) Antiques, i.e., any item over one hundred years of age, including such items that have been repaired or renovated without changing their original form or character, and (4) Jewelry (other than wedding rings).

(h) *Savings association.* For purposes of this part, the term "savings association" includes any savings association, and any service corporation that is wholly owned by one or more savings association, that engages in the business of providing credit to consumers.

**§ 535.2 Unfair credit practices**

(a) In connection with the extension of credit to consumers after January 1, 1986, It is an unfair act or practice within the meaning of section 5 of the Act for & savings association directly or indirectly to enter into a consumer credit obligation that constitutes or contains, or to enforce in a consumer credit obligation purchased by a savings association, any of the following provisions:

(1) A cognovit or confession of judgment ( for purposes other than executory process in the State of Louisiana), warrant of attorney, or other waiver of the right to notice and the opportunity to be heard in the event of suit or process thereon:

(2) An executory waiver or a limitation of exemption from attachment, execution, or other process on real or personal property held, owned by, or due to the consumer, unless the waiver applies solely to property subject to a security interest executed in connection with the obligation;

(3) An assignment of wages or other earnings, unless:
( i )The assignment by it's terms is revocable at the will of the debtor, (ii) The assignment is a payroll deduction plan or preauthorized payment plan, commencing at the time of the transaction, in which the consumer authorizes a series of wage deductions as a method of making each payment, or (iii) The assignment applies only to wages or other earnings

already earned at the time of the assignment.

(4) A nonpossessory security interest in household goods other than a purchase-money security interest.

**§ 535.5 State exemptions.**

(a) Upon application to the Office by an appropriate state agency, the Office shall determine if:

(1) There is a state requirement or prohibition in effect that applies to any transaction to which a provision of this rule applies; and (2) The state requirement or prohibition affords a level of protection to consumers that is substantially equivalent to, or greater than, the protection afforded by this rule.

(b) If the Office makes a determination as specified under paragraph (a) of this section, then that provision of this section will not be in effect in that state to the extent specified by the Office in it's determination, for as long as the state administers and enforces the state requirement or prohibition effectively, as determined by the Office.

(c) The Director of Consumer Affairs in consultation with the Chief Counsel shall have delegated authority to make such determinations as are required under this part 535.

**PART 541-DEFINITIONS**

Sec. 541.1 General. 541.2 Act. 541.3 Combination of home and business property . 541.4 Combination of residential real estate - and business property involving only minor or incidental busi8ness use; 541.5 Commercial paper. 541.6 Cooperative housing development. 541.7 Corporate

debt security. 541.8 Debit card. 541.10 Dwelling unit.
541.11 Federal savings association. 541.13 Guaranteed loan.
541.14.Home. 541.15 Improved nonresidential real estate.
541.16 Improved residential real estate. 541.17 Insured loan.
541.18 Interim Federal savings association. 541.19 Interim state savings association. 541.20 Loans.
541.21 Nonresidential real estate.541.22 [Reserved).
541.23 Residential real estate. 541.25 Single-family dwelling.
541.26 Surplus. 541.27 Unimproved real estate.
541.28 Withdrawal value of a savings acc count.

Authority: 12 U.S.C. 1462a, 1463, 1464.
SOURCE: 54 FR 49480, Nov. 30, 1989, unless otherwise noted.

**§541.1. General**

Unless another definition is provided in this chapter, definitions in part 561 of this chapter apply.

**§ 541.2 Act..**

The term *Act* means the Home Owner's Loan Act of 1933, as amended.

**§ 541.11 Federal savings association.**

The term Federal savings association means a Federal savings association or Federal savings bank chartered under section 5(0) of the Act.

**§ 545.1 General authority.**

A Federal savings association may exercise a11 authority granted it by the Home Owners' Loan Act of 1933 ("Act"),

12 U.S.C. 1464, as amended, and it's charter and bylaws, whether or not implemented specifically by Office regulations, subject to the limitations and interpretations contained in this Part.

**§545.11 Issuance of accounts**

(a) Prior to doing business and issuing accounts as defined in § 561.2 of this chapter, a Federal savings association shall obtain and maintain insurance of all its accounts by the Federal Deposit Insurance Corporation.

(b) *General.* Pursuant to section 5(b)(I) of the Act, a Federal savings association may issue accounts as defined in § 561.2 of this chapter . A "Federal savings association may establish classes of accounts and specify terms and conditions for such classes of accounts. Amounts deposited in accounts may be in cash or property in which the association is authorized to invest. The authority of a Federal savings association to issue accounts pursuant to this part is subject to any applicable provision of part 563 of this chapter.

(c) *Status and priority of savings deposits and accounts.* In the event of voluntary or involuntary liquidation, d1ssolution, or winding up of the association, or in the event of any other situation in which the priority of savings deposits and accounts is in controversy, such savings deposits and accounts shall, to the extent of their withdrawable value, be debts of the Federal savings association having the same priority as debts of general creditors who have no priority, other than from consensual subordination, over other general creditors. Savings deposits of Federal mutual savings associations shall have the same right to share in the remaining assets of the Federal savings association that savings share accounts would have.

**PART 556-STATEMENTS OF POLICY-**

Sec. 556.5 Branching by Federal savings associations. 556.12 Deposit assurance of direct deposit of-social security payments. 556.13 Receipt of interest expressed as a percentage of other income.

AUTHORITY: 5 U.S.C. 552, 559; 12 U.S.C. 1464,1701j-3; 15 U.S.C. 1693-1693r.

SOURCE: 54 FR 49538, Nov. 30, 1009, unless otherwise noted.

**§ 556.6 Branching by Federal savings associations.**

(a) *General.* A Federal association may branch in any state or states of the United States and its territories except as provided in paragraph (b) of this section, subject to the requirements of paragraph (c) of this section.

(b) Limitations. No branching will be permitted under Paragraph (a) of this section that ,will result in the following:

(1)-Establishment or operation of a branch outside the state in which the association has its home office in violation of section 5(r) of the Home Owners' Loan Act;

(2) Formation by any company of a multiple savings and loan holding company controll ing savings associations in more than one state in violation of section 10(e)(3) of the Home Owners' Loan Act; or

(3) Acquisition of a savings association and the establishment and operation of new branches by such savings association in violation of section 13(k)(4) of the Federal Deposit Insurance

Act.

(c) Branching applications. (1) *General.* Prior to opening a branch, an association must obtain approval of a branching application pursuant to §545.92 of this chapter. The Office may approve or deny an application based on information available from any source and supervisory objection may be interposed at any point during the processing of the application. In granting supervisory clearance to an applicant, the Office will consider whether the policies, condition, and operation of the applicant are satisfactory and afford no basis for supervisory objection.

## PART 560-LENDING AND INVESTMENT

### § 560.1 General

(a) *Authority and scope.* This being issued by OTS under its general rulemaking and supervisory authority under the Home Owners' Loan Act (HOLA), 12 U.S.C. 1462 *et seq.* Subpart A of this part sets forth the lending and investment powers of Federal savings associations. Subpart B of this part contains safety-and-soundness based lending and investment provisions applicable to all savings associations. Subpart C of this part addresses alternative mortgages and applies to all savings associations.

(b) *General lending standards.* Each savings association is expected to conduct its lending and investment activities, prudently. Each association should use lending "and investment" standards that are consistent with safety and soundness, ensure adequate portfolio diversification and are appropriate for the size and condition, of the institution, the nature and scope of its operations, and conditions in its lending market. Each association should adequately monitor

the condition of its portfolio and the adequacy of any collateral securing its loans.

**§560.2 Applicability of law.**

( a) *Occupation of field.* Pursuant to sections 4(a.) and 5(a.) of the HOLA, 12 U.S.C. 1463(a), 1464(a.), OTS is authorized to promulgate regulations that preempt state laws affecting the operations of federal savings associations when deemed appropriate to facilitate the safe and sound operation of federal savings associations, to enable federal savings associations to conduct their operations in accordance with the best practices of thrift institutions in the United States, or to further other purposes of the HOLA. To enhance safety and soundness and to enable federal savings associations to conduct their operations in accordance with best practices (by efficiently delivering lowcost credit to the public free from undue regulatory duplication and burden), OTS hereby occupies the entire field of lending regulation for federal savings associations. OTS intends to give federal savings associations maximum flexibility to exercise their lending powers in accordance with a uniform federal scheme of regulation. Accordingly, federal savings associations may extend credit as authorized under federal law, including this part, without regard to state laws purporting to regulate or otherwise affect their credit activities, except to the extent provided in paragraph (c) of this section or § 560.110 of this part. For purposes of this section, "state law" includes any state statute, regulation. ruling, order or judicial decision.

(c) State laws that are not preempted. State laws of the following types are not preempted to the extent that they only incidentally affect the lending operations of Federal savings associations or are otherwise consistent with the purposes of paragraph (a) of this section:

(1) Contract and commercial law; (2) Real property law; (3) Homestead laws specified in 12 U.S.C.I462a(f); (4) Tort law; (5) Criminal law; and (6) Any other law that OTS, upon review, finds:

(i) Furthers a vital state interest; and (ii) Either has only an incidental effect on lending operations or is not otherwise contrary to the purposes expressed in paragraph (a) of this section.

**§ 560.3 Definitions.**

For purposes of this part and. any determination under 12 U.S.C. 1467a:

*Consumer loans* include loans for personal, family, or household purposes and loans reasonably incident thereto, and may be made as either open-end or closed-end consumer credit. but do not include credit extended in connection with credit cards nor bonafide overdraft loans.

**§ 561.2 Account**

The term *account* means any savings account, demand account, certificate account, tax and loan account, note account, United States Treasury general account or United States Treasury time deposit-open account, whether in the form of a deposit or share, held by an accountholder in a savings association.

**§ 561.12 Consumer Credit**

The term consumer credit means credit extended to a natural person for personal, family, or household purposes, including loans secured by liens on real estate and chattel liens secured

by mobile homes and leases of personal property to consumers that may be considered the functional equivalent of loans on personal security: *Provided*, the savings association relies substantially upon other factors, such as the general credit standing of the borrower, guaranties, or security other than the real estate or mobile home, as the primary security for the loan. Appropriate evidence to demonstrate justification for such reliance should be retained in a savings association's files. Among the types of credit included within this term are consumer loans; educational loans; unsecured loans for real property alteration, repair or improvement, or for the equipping of real property; loans in the nature of overdraft protection; and credit extended in connection with credit cards.

**§ 561.32 Normal lending territory.**

(a) Normal lending territory is the area (1) within the State in which such savings .association's principal office is located; (2) within any portion of a circle with a radius of 100 miles from the principal office which is outside of such state; and (3) other territory in which the savings association was operating on June 27, 1934

(B) *Definitions*. For the purpose of this section the term *State* includes the District of, Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States; and a county, parish or similar political subdivision of a State is the unit of "territory"in which the savings association was operating on June 27, 1934.

**§ 561.36 Open-end consumer credit.**
The term open-end credit means credit as defined in Regulation Z (12 CFR 226.2(a)(20) ).

**15 USCS. 45 Unfair methods of competition unlawful;** prevention by Commission

(a) Declaration of unlawfulness; power to prohibit unfair practices; inapplicability to foreign trade

(1) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.

**15 USCS Section 1125** False designations of origin, false descriptions, and dilution forbidden

(a) Civil action

(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which--

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person..... shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act.

(2) As used in this subsection, the term "any person" includes any State, instrumentality of a State or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this chapter in the same

manner and to the same extent as any non governmental entity.

**15 USCS. 1692e** False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(2) The false representation of - (A) the character, amount, or legal status of any debt;

(9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or *which creates a false impression as to its source, authorization, or approval.*

**15 USCS. 1692f Unfair practices**

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section: (1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

**18 USCS. 241** Conspiracy against rights

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State in the free exercise or enjoyment of any right or privilege secured to him by the

Constitution or laws of the United States, or because of his having so exercised the same; They shall be fined under this title or imprisoned not more than ten years, or both;

**18 USCS. 242 Deprivation of rights under color of law**

Whoever, under color of any law, statute, ordinance, regulation or custom, willfully subjects any person in any State to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States,..... or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race shall be fined under this title or imprisoned not more than one year, or both;

**18 USCS. 245** Federally protected activities

(b) Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with -

(1) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from - (B) participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by the United States; (E) participating in or enjoying the benefits of any program or activity receiving Federal financial assistance; or

(2) any person because of his race, color, religion or national origin and because he is or has been (B) participating in or enjoying any benefit service, privilege, program, facility or activity provided or administered by any State or subdivision thereof;

(4) any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from -

(A) participating, without discrimination on account of race, color, religion or national origin, in any of the benefits or activities described in subparagraphs (1)(A) through (1)(E) or subparagraphs (2)(A) through (2)(F); or (B) affording another person or class of persons opportunity or protection to so participate;

(5) any citizen because he is or has been, or in order to intimidate such citizen or any other citizen from lawfully aiding or encouraging other persons to participate, without discrimination on account of race, color, religion or national origin, in any of the benefits or activities described in subparagraphs (1)(A) through (1)(E) or subparagraphs (2)(A) through (2)(F), or participating lawfully in speech or peaceful assembly opposing any denial of the opportunity to so participate shall be fined under this title, or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire shall be fined under this title, or imprisoned not more than ten years, or both;

**18 USCS. 1001** Statements or entries generally

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be

fined under this title or imprisoned not more than five years, or both.

**18 USCS. 1018** Official certificates or writings

Whoever, being a public officer or other person authorized by any law of the United States to make or give a certificate or other writing, knowingly makes and delivers as true such a certificate or writing, containing any statement which he knows to be false, in a case where the punishment thereof is not elsewhere expressly provided by law, shall be fined under this title or imprisoned not more than one year, or both.

**18 USCS. 1341** Frauds and swindles

Whoever, having devised or intending to devise any scheme or artifice to defraud, ..... or procure for unlawful use any counterfeit .... or other article, .... for the purpose of executing such scheme or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail or such carrier according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined under this title or imprisoned not more than five years, or both.

**18 USCS 1343** Fraud by wire, radio, or television

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, ..... transmits or causes to be transmitted by means of wire, ... in

interstate or foreign commerce, any writings, for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than five years, or both.

**18 USCS. 1505 .** Obstruction of proceedings before departments, agencies, and committees

Whoever corruptly, ..... communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States .....Shall be fined under this title or imprisoned not more than five years, or both.

**18 USCS 1512** Tampering with a witness, victim, or an informant

(b) Whoever knowingly uses intimidation or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to - (1) influence, delay, or prevent the testimony of any person in an official proceeding; (2) cause or induce any person to - (A) withhold a record, document, or other object, from an official proceeding; (B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding; (C) to produce a record, document, or other object, in an official proceeding; (3) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense shall be fined under this title or imprisoned not more than ten years, or both.

(c) Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades any person

from (1) attending or testifying in an official proceeding; shall be fined under this title or imprisoned not more than one year, or both.

(e) For the purposes of this section (1) an official proceeding need not be pending or about to be instituted at the time of the offense; and (2) the testimony, or the record, document, or other object need not be admissible in evidence or free of a claim of privilege.

**18 USCS 1513**. Retaliating against a witness, victim, or an informant

(b) Whoever knowingly engages in any conduct and thereby causes bodily injury to another person or damages the tangible property of another person, or threatens to do so, with intent to retaliate against any person for -

(1) the attendance of a witness or party at an official proceeding, or any testimony given or any record, document, or other object produced by a witness in an official proceeding; or

(2) any information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, parole, or release pending judicial proceedings given by a person to a law enforcement officer; or attempts to do so, shall be fined under this title or imprisoned not more than ten years, or both.

(c) There is extraterritorial Federal jurisdiction over an offense under this section.

**18 USCS Sec. 1515.** Definitions for certain provisions; general provision

(a) As used in sections 1512 and 1513 of this title and in this section - (1) the term "official proceeding" means - (A) a proceeding before a judge or court of the United States, a United States magistrate, a bankruptcy judge, a judge of the United States Tax Court, a special trial judge of the Tax Court, a judge of the United States Court of Federal Claims,

**18 USCS. 1621** Perjury generally

Whoever -(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true; is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.

**18 USCS. 1622** Subornation of perjury
Whoever procures another to commit any perjury is guilty of subornation of perjury, and shall be fined under this title or imprisoned not more than five years, or both.

**18 USCS 1623.** False declarations before grand jury or court

(a) Whoever under oath (or in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code) in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration, shall be fined under this title or imprisoned not more than five years, or both.

(b) This section is applicable whether the conduct occurred within or without the United States.

(c) An indictment or information for violation of this section alleging that, in any proceedings before or ancillary to any court or grand jury of the United States, the defendant under oath has knowingly made two or more declarations, which are inconsistent to the degree that one of them is necessarily false, need not specify which declaration is false if (1) each declaration was material to the point in question, and (2) each declaration was made within the period of the statute of limitations for the offense charged under this section. In any prosecution under this section, the falsity of a declaration set forth in the indictment or information shall be established sufficient for conviction by proof that the defendant while under oath made irreconcilably contradictory declarations material to the point in question in any proceeding before or ancillary to any court or grand jury. It shall be a defense to an indictment or information made pursuant to the first sentence of this subsection that the defendant at the time he made each declaration believed the declaration was true.
(d) Where, in the same continuous court or grand jury proceeding in which a declaration is made, the person making the declaration admits such declaration to be false, such

admission shall bar prosecution under this section if, at the time the admission is made, the declaration has not substantially affected the proceeding, or it has not become manifest that such falsity has been or will be exposed.
(e) Proof beyond a reasonable doubt under this section is sufficient for conviction. It shall not be necessary that such proof be made by any particular number of witnesses or by documentary or other type of evidence.

**18 USCS 1951** Interference with commerce by threats or violence

(a) Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article..... in commerce, by extortion or attempts or conspires so to do....in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

(b) As used in this section (2) **The term "extortion"** means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, or fear, or under color of official right.

(3) The term **"commerce"** means commerce within the District of Columbia, or any Territory or Possession of the United States; all commerce between any point in a State, all commerce between points within the same State through any place outside such State; and all other commerce over which the United States has jurisdiction.

The words **"attempts or conspires so to do"** were substituted for sections 3 and 4 of the 1946 act, omitting as unnecessary the words "participates in an attempt" and the words "or acts in concert with another or with others", in view of section 2 of this title which makes any person who

participates in an unlawful enterprise or aids or assists the principal offender, or does anything towards the accomplishment of the crime, a principal himself.

**18 USCS. 1952** Interstate and foreign travel or transportation in aid of racketeering enterprises
(a) Whoever uses the mail or any facility in interstate or foreign commerce, with intent to -
(1) distribute the proceeds of any unlawful activity; or (2) commit any crime of violence to further any unlawful activity; or (3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, and thereafter performs or attempts to perform - (A) an act described in paragraph (1) or (3) shall be fined under this title, imprisoned not more than 5 years, or both; (2) extortion in violation of the laws of the State in which committed (3) (ii) the term "State" includes a State of the United States,

**18 USCS 1961 Sec. 1961. Definitions**
As used in this chapter -

**(1)** "racketeering activity" means **(A)** any act or threat involving murder, kidnaping, gambling, arson, robbery, bribery, **extortion,** .....which is chargeable under State law and punishable by imprisonment for more than one year; **(B)** any act which is indictable under any of the following provisions of title 18, United States Code: ..... section1341 (relating to mail fraud), section 1343 (relating to wire fraud), section 1344 (relating to financial institution fraud), section 1512 (relating to tampering with a witness, victim, or an informant), section 1513 (relating to retaliating against a witness, victim, or an informant), section 1951 (relating to interference with commerce, robbery, or extortion), section 1952 (relating to racketeering),

## CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSE

Section 1 of Pub. L. 91-452 provided in part that: "The Congress finds that (1) organized crime in the United States is a highly sophisticated, diversified, and widespread activity that annually drains billions of dollars from America's economy by unlawful conduct and the illegal use of force, fraud, and corruption; (2) organized crime derives a major portion of its power through money obtained from such illegal endeavors as syndicated gambling, loan sharking, the theft and fencing of property, the importation and distribution of narcotics and other dangerous drugs, and other forms of social exploitation; (3) this money and power are increasingly used to infiltrate and corrupt legitimate business and labor unions and to subvert and corrupt our democratic processes; (4) organized crime activities in the United States weaken the stability of the Nation's economic system, harm innocent investors and competing organizations, interfere with free competition, seriously burden interstate and foreign commerce, threaten the domestic security, and undermine the general welfare of the Nation and its citizens; and (5) organized crime continues to grow because of defects in the evidence-gathering process of the law inhibiting the development of the legally admissible evidence necessary to bring criminal and other sanctions or remedies to bear on the unlawful activities of those engaged in organized crime and because the sanctions and remedies available to the Government are unnecessarily limited in scope and impact.

"It is the purpose of this Act (see Short Title note above) to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by

providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime."

**18 USCS. 1962** Prohibited activities

**(a)** It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

**(b)** It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

**(c)** It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

**(d)** It shall be unlawful for any person to conspire to violate any of the provisions of subsection (a), (b), or (c) of this section.

**18 USCS. 1964** Civil remedies

(a) The district courts of the United States shall have jurisdiction to prevent and restrain **violations of section 1962 of** this chapter by issuing appropriate orders, including, but not limited to: ordering any person to divest himself of any

interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise, making due provision for the rights of innocent persons.

(c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962.

**28 USCS 2106** Determination

The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

**28 USCS. 2254** State custody; remedies in Federal courts

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in

custody in violation of the Constitution or laws or treaties of the United States.

**28 USCS 2671** Definitions

As used in this chapter and sections 1346(b) and 2401(b) of this title, the term "Federal agency" includes the executive departments, the judicial and legislative branches, the military departments, independent establishments of the United States, and corporations primarily acting as instrumentalities or agencies of the United States, but does not include any contractor with the United States. "Employee of the government" includes officers or employees of any federal agency, members of the military or naval forces of the United States, members of the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32, and persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation. "Acting within the scope of his office or employment", in the case of a member of the military or naval forces of the United States or a member of the National Guard as defined in section 101(3) of title 32, means acting in line of duty.

**39 USCS. 3009 . Mailing of unordered merchandise**
(a) **Except for** (1) free samples clearly and conspicuously marked as such, and (2) merchandise mailed by a charitable organization soliciting contributions, the mailing of unordered merchandise or of communications prohibited by subsection (c) of this section constitutes an unfair method of competition and an unfair trade practice in violation of section 45(a)(1) of title 15.

(b) Any merchandise mailed in violation of subsection (a) of this section, or within the exceptions contained therein, may

be treated as a gift by the recipient, who shall have the right to retain, use, discard, or dispose of it in any manner he sees fit without any obligation whatsoever to the sender. All such merchandise shall have attached to it a clear and conspicuous statement informing the recipient that he may treat the merchandise as a gift to him and has the right to retain, use, discard, or dispose of it in any manner he sees fit without any obligation whatsoever to the sender.

(c) No mailer of any merchandise mailed in violation of subsection (a) of this section, or within the exceptions contained therein, shall mail to any recipient of such merchandise a bill for such merchandise or any dunning communications.

(d) For the purposes of this section, "unordered merchandise" means merchandise mailed without the prior expressed request or consent of the recipient.

**42 USCS. 1981**

**(a)** Statement of equal rights..... All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(c) Protection against impairment...The rights protected by this section are protected against impairment by non governmental discrimination and impairment under color of State law.

**42 USCS 1983** Civil action for deprivation of rights
Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

CODIFICATION

R.S. Sec. 1979 derived from act Apr. 20, 1871, ch. 22, Sec. 1, 17 Stat. 13.

**42 USCS 1985** Conspiracy to interfere with civil rights
(2) Obstructing justice; intimidating party, witness, or juror if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges....If two or more persons in any State or Territory conspire ..for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; .....or for the purpose of preventing or hindering the constituted authorities of any State from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by intimidation

.....or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

**N. Y. Constitution-Article 1; Section § 2.** [Trial by jury; how waived]

Trial by jury in all cases in which it has heretofore been guaranteed by constitutional provision shall remain inviolate forever; but a jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law. The legislature may provide, however, by law, that a verdict may be rendered by not less than five-sixths of the jury in any civil case. A jury trial may be waived by the defendant in all criminal cases, except those in which the crime charged may be punishable by death, by a written instrument signed by the defendant in person in open court before and with the approval of a judge or justice of a court having jurisdiction to try the offense. The legislature may enact laws, not inconsistent herewith, governing the form, content, manner and time of presentation of the instrument effectuating such waiver.

**N. Y. Constitution- Article 1, Section § 11.** [Equal protection of laws; discrimination in civil rights prohibited]

No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state.

**N. Y. S. Rules & Regulations**

**22 NYCRR § 604.1**. Obligation of attorneys and judges

(a) **Application of rules.** This Part shall apply to all actions and proceedings, civil and criminal, in courts subject to the jurisdiction of the Appellate Division of the Supreme Court in this Judicial Department. It is intended to supplement but not to supersede, the code of professional responsibility as adopted by the New York State Bar Association and the rules governing judicial conduct as promulgated by the Administrative Board of the Judicial Conference. In the event of any conflict between the provisions of this Part and the code of professional responsibility or the rules governing judicial conduct, the code of professional responsibility and the rules governing judicial conduct shall prevail.

(d) **Obligation of the attorney.**

(1) The attorney is both an officer of the court and an advocate. It is his professional obligation to conduct his case courageously, vigorously, and with all the skill and knowledge he possesses. It is also his obligation to uphold the honor and maintain the dignity of the profession. He must avoid disorder or disruption in the courtroom, and he must maintain a respectful attitude toward the court. In all respects the attorney is bound, in court and out, by the provisions of the code of professional responsibility.

(e) **Obligations of the judge.**

(1) In the administration of justice, the judge shall safeguard the rights of the parties and the interests of the public. The judge at all times shall be dignified, courteous, and considerate of the parties, attorneys, jurors, and witnesses. In the performance of his duties and in the maintenance of proper court decorum the judge is in all respects bound by the rules governing judicial conduct.

(2) The judge shall use his judicial power to prevent disruptions of the trial.

(3) A judge before whom a case is moved for trial shall preside at such trial unless he is satisfied, upon challenge, or *sua sponte*, that he is unable to serve with complete impartiality, in fact or appearance, with regard to the matter, or parties in question.

(4) Where the judge deems it appropriate in order to preserve or enhance the dignity, order and decorum of the proceedings, he shall prescribe and make known the rules relating to conduct which the parties, attorneys, witnesses and others will be expected to follow in the courtroom.

(5) The judge should be the exemplar of dignity and impartiality. He shall suppress his personal predilections, control his temper and emotions, and otherwise avoid conduct on his part which tends to demean the proceedings or to undermine his authority in the courtroom. When it becomes necessary during trial for him to comment upon the conduct of witnesses, spectators, counsel, or others, or upon the testimony, he shall do so in a firm and polite manner, limiting his comments and rulings to what is reasonably required for the orderly progress of the trial, and refraining

from unnecessary disparagement of persons or issues.

(6) The judge is not relieved of these obligations by what he may regard as a deficiency in the conduct of any attorney who appears before him; nor is he relieved of these obligations by what he believes to be the moral, political, social, or ideological deficiencies of the cause of any party.

**22 NYCRR 1200.**. Code of Professional Conduct & Responsibility

**DR 1-102. Misconduct**

A. A lawyer shall not:

1. Violate a Disciplinary Rule.

2. Circumvent a Disciplinary Rule through actions of another.

3. Engage in illegal conduct involving moral turpitude.

4. Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

5. Engage in conduct that is prejudicial to the administration of justice.

6. Unlawfully discriminate in the practice of law, including in hiring, promoting or otherwise determining conditions of employment, on the basis of age, race, creed, color, national origin, sex, disability, marital status, or sexual orientation. Where there is available a tribunal of competent jurisdiction, other than a Departmental Disciplinary Committee, a complaint of professional misconduct based on unlawful discrimination shall be brought before such tribunal in the first

instance. A certified copy of a determination by such a tribunal, which has become final and enforceable, and as to which the right to judicial or appellate review has been exhausted, finding that the lawyer has engaged in an unlawful discriminatory practice shall constitute prima facie evidence of professional misconduct in a disciplinary proceeding.

7. In domestic relations matters, begin a sexual relationship with a client during the course of the lawyer's representation of the client.

8. Engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.

**DR 1-103. Disclosure of Information to Authorities** A. A lawyer possessing knowledge, (1) not protected as a confidence or secret, or (2) not gained in the lawyer's capacity as a member of a bona fide lawyer assistance or similar program or committee, of a violation of section 1200.3 of this Part that raises a substantial question as to another lawyer's honesty, trustworthiness or fitness in other respects as a lawyer shall report such knowledge to a tribunal or other authority empowered to investigate or act upon such violation.

B. A lawyer possessing knowledge or evidence, not protected as a confidence or secret, concerning another lawyer or a judge shall reveal fully such knowledge or evidence upon proper request of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers and judges.

**DR 1-104. Responsibilities of a Supervisory Lawyer** A. A lawyer shall be responsible for a violation of the Disciplinary Rules by another lawyer or for conduct of a non-lawyer employed or retained by or associated with the lawyer that

would be a violation of the Disciplinary Rules if engaged in by a lawyer if:

1. The lawyer orders the conduct; or

2. The lawyer has supervisory authority over the other lawyer or the non-lawyer, and knows or should have known of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

**DR 7-101. Representing a Client Zealously**

A. A lawyer shall not intentionally:

1. Fail to seek the lawful objectives of the client through reasonably available means permitted by law and the Disciplinary Rules, except as provided by DR 7-101(B). A lawyer does not violate this Disciplinary Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice in the rights of the client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.

2. Fail to carry out a contract of employment entered into with a client for professional services, but the lawyer may withdraw as permitted under DR 2-110, DR5-102, and DR 5-105.

3. Prejudice or damage the client during the course of the professional relationship, except as required under DR 7-102(B).

B. In the representation of a client, a lawyer may:

1. Where permissible, exercise professional judgment to waive or fail to assert a right or position of the client.

2. Refuse to aid or participate in conduct that the lawyer believes to be unlawful, even though there is some support for an argument that the conduct is legal.

**DR 7-102. Representing a Client Within the Bounds of the Law**

A. In the representation of a client, a lawyer shall not:

1. File a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

2. Knowingly advance a claim or defense that is unwarranted under existing law, except that the lawyer may advance such claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law.

3. Conceal or knowingly fail to disclose that which the lawyer is required by law to reveal.

4. Knowingly use perjured testimony or false evidence.

5. Knowingly make a false statement of law or fact.

6. Participate in the creation or preservation of evidence when he lawyer knows or it is obvious that the evidence is false.

7. Counsel or assist the client in conduct that the lawyer knows to be illegal or fraudulent.

8. Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.

B. A lawyer who receives information clearly establishing that:

1. The client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon the client to rectify the same, and if the client refuses or is unable to do so, the lawyer shall reveal the fraud to the affected person or tribunal, except when the information is protected as a confidence or secret.

2. A person other than the client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

**DR 7-106. Trial Conduct**

A. A lawyer shall not disregard or advise the client to disregard a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take appropriate steps in good faith to test the validity of such rule or ruling.

B. In presenting a matter to a tribunal, a lawyer shall disclose:

1. Controlling legal authority known to the lawyer to be directly adverse to the position of the client and which is not disclosed by opposing counsel.

2. Unless privileged or irrelevant, the identities of the clients the lawyer represents and of the persons who employed the lawyer.

C. In appearing as a lawyer before a tribunal, a lawyer shall not:

1. State or allude to any matter that he or she has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.

2. Ask any question that he or she has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person.

3. Assert personal knowledge of the facts in issue, except when testifying as a witness.

4. Assert a personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused; but the lawyer may argue, upon analysis of the evidence, for any position or conclusion with respect to the matters stated herein.

5. Fail to comply with known local customs of courtesy or practice of the bar or a particular tribunal without giving to opposing counsel timely notice of the intent not to comply.

6. Engage in undignified or discourteous conduct which is degrading to a tribunal.

7. Intentionally or habitually violate any established rule of procedure or of evidence.

**DR 7-110. Contact with Officials**

A. A lawyer shall not give or lend anything of value to a judge, official, or employee of a tribunal except as permitted

by Section C(4) of Canon 5 of the Code of Judicial Conduct, but a lawyer may make a contribution to the campaign fund of a candidate for judicial office in conformity with Section B(2) under Canon 7 of the Code of Judicial Conduct.

B. In an adversary proceeding, a lawyer shall not communicate, or cause another to communicate, as to the merits of the cause with a judge or an official before whom the proceeding is pending, except:

1. In the course of official proceedings in the cause.

2. In writing if the lawyer promptly delivers a copy of the writing to opposing counsel or to an adverse party who is not represented by a lawyer.

3. Orally upon adequate notice to opposition counsel or to an adverse party who is not represented by a lawyer.

4. As otherwise authorized by law, or by Section A(4) under Canon 3 of the Code of Judicial Conduct.

**DR 8-101. Action as a Public Official**

A. A lawyer who holds public office shall not:

1. Use the public position to obtain, or attempt to obtain, a special advantage in legislative matters for the lawyer or for a client under circumstances where the lawyer knows or it is obvious that such action is not in the public interest.

2. Use the public position to influence, or attempt to influence, a tribunal to act in favor of the lawyer or of a client.

3. Accept any thing of value from any person when the lawyer

knows or it is obvious that the offer is for the purpose of influencing the lawyer's action as a public official.

**DR 9-101. Avoiding Even the Appearance of Impropriety.**

A. A lawyer shall not accept private employment in a matter upon the merits of which the lawyer has acted in a judicial capacity.

B. Except as law may otherwise expressly permit:

1. A lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, and no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

a. The disqualified lawyer is effectively screened from any participation, direct or indirect, including discussion, in the matter and is apportioned no part of the fee therefrom; and

b. There are no other circumstances in the particular representation that create an appearance of impropriety.

2. A lawyer having information that the lawyer knows is confidential government information about a person, acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. A firm with which that lawyer is associated may knowingly undertake or continue representation in the matter only if the disqualified lawyer is effectively screened from any nonparticipation, direct or indirect, including discussion, in the matter and is

apportioned no part of the fee therefrom.

3. A lawyer serving as a public officer or employee shall not:

a. Participate in a matter in which the lawyer participated personally and substantially while in private practice or non-governmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyer's stead in the matter; or

b. Negotiate for private employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially.

C. A lawyer shall not state or employ that the lawyer is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official.

D. A lawyer related to another lawyer as parent, child, sibling or spouse shall not represent in any matter a client whose interests differ from those of another party to the matter who the lawyer knows is represented by the other lawyer unless the client consents to the representation after full disclosure and the lawyer concludes that the lawyer can adequately represent the interests of the client.

**DEFINITIONS**

As used in the Disciplinary Rules of the Code of Professional Responsibility:

1. "Differing interests" include every interest that will adversely affect either the judgment or the loyalty of a lawyer to a client, whether it be a conflicting, inconsistent, diverse, or other interest.

2. "Law firm" includes, but is not limited to, a professional legal corporation, the legal department of a corporation or other organization and a legal services organization.

3. "Person" includes a corporation, an association, a trust, a partnership, and any other organization or legal entity.

4. "Professional legal corporation" means a corporation, or an association treated as a corporation, authorized by law to practice law for profit.

5. "State" includes the District of Columbia, Puerto Rico, and other federal territories and possessions.

6. "Tribunal" includes all courts and all other adjudicatory bodies. A tribunal shall be deemed "available" when it would have jurisdiction to hear a complaint, if timely brought.

7. "Bar association" includes a bar association of specialists as referred to in DR 2-105(B).

8. "Qualified legal assistance organization" means an office or organization of one of the four types listed in DR 2-103(D)(1) through (4), inclusive, that meets all the requirements thereof.

9. "Fraud" does not include conduct, although characterized as fraudulent by statute or administrative rule, which lacks an element of scienter, deceit, intent to mislead, or knowing failure to correct misrepresentations which can be reasonably expected to induce detrimental reliance by another.

**N. Y. Banking Law § 669.**

Unauthorized use of the term "bank" or "trust company"

Any person not authorized by the superintendent of banks, who:

1. Uses an office sign at the place where his business is transacted, having thereon any artificial or corporate name, or other words indicating that such place or office is the place or office of a bank or trust company; or,

2. Uses or circulates any letter-heads, bill-heads, blank notes, blank receipts, certificates, circulars or any written or printed paper whatever, having thereon any artificial or corporate name, or other word or words indicating that such business is the business of a bank or trust company.

Is guilty of a misdemeanor; provided, however, that nothing in this section shall be deemed to prevent a bank holding company from using any corporate name it is duly authorized to use under subdivision (b) of section three hundred two of the business corporation law.

**N. Y. Business Corporation Law § 1312.**
Actions or special proceedings by unauthorized foreign corporations

(a) A foreign corporation doing business in this state without authority shall not maintain any action or special proceeding in this state unless and until such corporation has been authorized to do business in this state and it has paid to the state all fees *and taxes imposed under the tax law or any related statute, as defined in section eighteen hundred of such law, as well as penalties and interest charges related thereto, accrued against the corporation.* This prohibition shall apply to any successor in interest of such foreign corporation.

(b) The failure of a foreign corporation to obtain authority to do business in this state shall not impair the validity of any contract or act of the foreign corporation or the right of any other party to the contract to maintain any action or special proceeding thereon, and shall not prevent the foreign corporation from defending any action or special proceeding in this state.

**N. Y. Banking Law Article IX. Licensed Lenders**

**Section § 340. Doing business without license prohibited**

No person *or other entity* shall engage in the business of making loans in the *principal* amount of *twenty-five* thousand dollars or less *for any loan to an individual for personal, family, household, or investment purposes and in a principal amount of fifty thousand dollars or less for business and commercial loans,* and charge, contract for, or receive a greater rate of interest than the lender would be permitted by law to charge if he were not a licensee hereunder except as authorized by this article and without first obtaining a license from the superintendent.

For the purposes of this section, a person *or entity* shall be considered as engaging in the business of making loans in New York, and subject to the licensing and other requirements of this article, if it solicits loans in the *amounts prescribed by this section* within this state and, in connection with such solicitation, makes loans to individuals then resident in this state, except that no person *or entity* shall be considered as engaging in the business of making loans in this state on the basis of isolated, incidental or occasional transactions which otherwise meet the requirements of this section.

Nothing in this article shall apply to licensed collateral loan brokers.

**Section § 348. Superintendent authorized to examine**

For the purpose of discovering violations of this article or securing information lawfully required hereunder, the superintendent may at any time, and as often as may be determined, either personally or by a person duly designated by the superintendent, investigate the loans and business and examine the books, accounts, records, and files used therein of every licensee. For that purpose the superintendent and duly designated representatives shall have free access to the offices and place of business, books, accounts, papers, records, files, safes and vaults of all such licensees. The superintendent shall have authority to require the attendance of and to examine under oath all persons whomsoever whose testimony may be required relative to such loans or such business.

**§ 349. Licensee's books and records; reports**

The licensee shall keep and use in its business such books, accounts, and records as will enable the superintendent to determine whether such licensee is complying with the provisions of this article and with the rules and regulations lawfully made by the superintendent hereunder. Every licensee shall preserve such books, accounts, and records, including cards used in the card system, if any, for at least two years after making the final entry on any loan recorded therein. Preservation of photographic reproduction thereof or records in photographic form, *including an optical disk storage system* and the use of electronic data processing equipment that provides comparable records to those otherwise required and which are available for examination

upon request shall constitute compliance with the requirements of this section.

Each licensee shall annually on or before the first day of *April* file a report with the superintendent giving such information as the superintendent may require concerning the business and operations during the preceding calendar year of each licensed place of business conducted by such licensee within the state under authority of this article. Such report shall be subscribed and affirmed as true by the licensee under the penalties of perjury and shall be in the form prescribed by the superintendent who shall make and publish annually a consolidated statement of condition showing the combined assets and liabilities of all licensed lenders. Such consolidated statement of condition shall be based upon the information contained in such reports. In addition to annual reports, the superintendent may require such additional regular or special reports as may *be deemed* necessary to the proper supervision of licensees under this article. Such additional reports shall be in the form prescribed by the superintendent and shall be subscribed and affirmed as true under the penalties of perjury.

**Section § 352. Acts required of licensees; acts prohibited**

Every licensee shall:

Deliver to the borrower at the time any loan is made or prior to the first advance under an open-end loan agreement a statement, in the English language showing in clear and distinct terms the name and address of the borrower and of the licensee and all items required to be disclosed by the act of congress entitled "Truth in Lending Act" and the regulations thereunder, as such act and regulations may from time to time be amended.

For each *cash* payment made on account of any *closed-end* loan, give to the person making it at the time the payment is made, a plain and complete receipt *containing the information required by regulations of the superintendent.*

Permit payment to be made in advance in any amount on any loan *agreement* at any time, but the licensee may *initially* apply such payment to all interest *and other charges due* to the date of such payment.

Upon repayment of the loan in full, mark indelibly every obligation signed by the borrower *or a copy thereof* with the word "paid" or "cancelled", and release any mortgage or security agreement no longer securing an obligation of the borrower, restore any pledge, cancel and return any note *or a copy thereof*, and cancel and return any assignment *or a copy thereof* given to the licensee by the borrower. An open-end loan shall not be deemed to be repaid in full for this purpose unless any balance is paid in full and the borrower relinquishes all power to receive further advances under the contract and makes a written request for the release of all collateral for the loan. Every licensee which holds collateral of a borrower shall be fully liable for the return of the collateral upon payment of the indebtedness in full.

No licensee shall take any confession of judgment or any power of attorney running to himself or to any third person to confess judgment or to appear for the borrower in a judicial proceeding.

No licensee shall take any instrument in which blanks are left to be filled in after execution.

**N. Y. S. Gen Bus Law § 396. Unlawful selling practices**

1. No person, firm, partnership, association or corporation, or agent or employee thereof, shall, in any manner, or by any means of advertisement, or other means of communication, offer for sale any merchandise, commodity, or service, as part of a plan or scheme with the intent, design, or purpose not to sell the merchandise, commodity, or service so advertised at the price stated therein, or with the intent, design or purpose not to sell the merchandise, commodity, or service so advertised. Nothing in this section shall apply to any television or sound radio broadcasting station or to any publisher or printer of a newspaper, magazine, or other form of printed advertising, who broadcasts, publishes, or prints such advertisement.

2. a. No person, firm, partnership, association or corporation, or agent or employee thereof, shall, in any manner, or by any means, offer for sale goods, wares or merchandise, where the offer includes the voluntary and unsolicited sending of goods, wares or merchandise not actually ordered or requested by the recipient, either orally or in writing*; any such goods, wares or merchandise so sent shall be prominently marked upon the container thereof in bold letters as follows: "THIS IS A GIFT. PAYMENT NOT REQUIRED FOR THIS ITEM". The receipt of any goods, wares or merchandise pursuant to an existing membership or club arrangement in which the recipient receives such goods, wares or merchandise at specified intervals or a plan where the recipient agrees to receive such goods, wares or merchandise without further obligation shall not be construed as the receipt of unsolicited goods, wares or merchandise for the purposes of this section.* The receipt of any such unsolicited goods, wares or merchandise shall for all purposes be deemed an unconditional gift to the recipient who may use or dispose of the same in any manner he sees fit without any obligation on his part to the sender.

If after any such receipt deemed to be an unconditional gift under this paragraph a, the sender continues to send bill statements or requests for payment with respect thereto, an action may be brought by the recipient to enjoin such conduct, in which action there may also be awarded reasonable attorneys' fees and costs to the prevailing party.

b. If a person is a member of an organization which makes retail sales of any goods, wares, or merchandise to its members, and the person notifies the organization of his termination of membership by certified mail, return receipt requested, any unordered goods, wares, or merchandise which are sent to the person after thirty days following execution of the return receipt for the certified letter by the organization, shall for all purposes be deemed unconditional gifts to the person, who may use or dispose of the goods, wares, or merchandise in any manner he sees fit without any obligation on his part to the organization.

If the termination of a person's membership in such organization breaches any agreement with the organization, nothing in this subdivision shall relieve the person from liability for damages to which he might be otherwise subjected to pursuant to law.

The provisions of this paragraph shall not apply to a member of an organization the sole purpose of which is the sale of a specific type of goods, wares or merchandise to its members until the member has fulfilled his initial purchase obligation.

3. Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain

the continuance of such violation; and if it shall appear to the satisfaction of the court or justice that the defendant is, in fact, violating this section, an injunction may be issued by such court or justice, enjoining and restraining such action or violation, without requiring proof that any person has, in fact, been misled or deceived or otherwise damaged thereby.

**N. Y. S. General Obligation Law § 5-701. Agreements required to be in writing**

a. Every agreement, promise or undertaking is void, unless it or some note or memorandum thereof be in writing, and subscribed by the party to be charged therewith, or by his lawful agent, if such agreement, promise or undertaking:

1. By its terms is not to be performed within one year from the making thereof or the performance of which is not to be completed before the end of a lifetime;

2. Is a special promise to answer for the debt, default or miscarriage of another person;

3. Is made in consideration of marriage, except mutual promises to marry;

4. [Repealed]

5. Is a subsequent or new promise to pay a debt discharged in bankruptcy;

6. Notwithstanding section 2-201 of the uniform commercial code, if the goods be sold at public auction, and the auctioneer at the time of the sale, enters in a sale book, a memorandum specifying the nature and price of the property sold, the terms of the sale, the name of the purchaser, and the

name of the person on whose account the sale was made, such memorandum is equivalent in effect to a note of the contract or sale, subscribed by the party to be charged therewith;

7, 8. [Repealed]

9. Is a contract to assign or an assignment, with or without consideration to the promisor, of a life or health or accident insurance policy, or a promise, with or without consideration to the promisor, to name a beneficiary of any such policy. This provision shall not apply to a policy of industrial life or health or accident insurance.

10. Is a contract to pay compensation for services rendered in negotiating a loan, or in negotiating the purchase, sale, exchange, renting or leasing of any real estate or interest therein, or of a business opportunity, business, its good will, inventory, fixtures or an interest therein, including a majority of the voting stock interest in a corporation and including the creating of a partnership interest. "Negotiating" includes procuring an introduction to a party to the transaction or assisting in the negotiation or consummation of the transaction. This provision shall apply to a contract implied in fact or in law to pay reasonable compensation but shall not apply to a contract to pay compensation to an auctioneer, an attorney at law, or a duly licensed real estate broker or real estate salesman.

b. Notwithstanding paragraph one of subdivision a of this section:1. An agreement, promise, undertaking or contract, which is valid in other respects and is otherwise enforceable, is not void for lack of a note, memorandum or other writing and is enforceable by way of action or defense provided that such agreement, promise, undertaking or contract is a

qualified financial contract as defined in paragraph two of this subdivision and (a) there is, as provided in paragraph three of this subdivision, sufficient evidence to indicate that a contract has been made, or (b) the parties thereto, by means of a prior or subsequent written contract, have agreed to be bound by the terms of such qualified financial contract from the time they reach agreement (by telephone, by exchange of electronic messages, or otherwise) on those terms.

2. For purposes of this subdivision, a "qualified financial contract" means an agreement as to which each party thereto is other than a natural person and which is:

(a) for the purchase and sale of foreign exchange, foreign currency, bullion, coin or precious metals on a forward, spot, next-day value or other basis;

(b) a contract (other than a contract for the purchase and sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade) for the purchase, sale or transfer of any commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or any product or byproduct thereof, with a maturity date more than two days after the date the contract is entered into;

(c) for the purchase and sale of currency, or interbank deposits denominated in United States dollars;

(d) for a currency option, currency swap or cross-currency rate swap;

(e) for a commodity swap or a commodity option (other than an option contract traded on, or subject to the rules of a contract market or board of trade);

(f) for a rate swap, basis swap, forward rate transaction, or an interest rate option;

(g) for a security-index swap or option or a security (or securities) price swap or option;

(h) an agreement which involves any other similar transaction relating to a price or index (including, without limitation, any transaction or agreement involving any combination of the foregoing, any cap, floor, collar or similar transaction with respect to a rate, commodity price, commodity index, security (or securities) price, security-index or other price index); or

(i) an option with respect to any of the foregoing.

3. There is sufficient evidence that a contract has been made if:

(a) There is evidence of electronic communication (including, without limitation, the recording of a telephone call or the tangible written text produced by computer retrieval), admissible in evidence under the laws of this state, sufficient to indicate that in such communication a contract was made between the parties;

(b) A confirmation in writing sufficient to indicate that a contract has been made between the parties and sufficient against the sender is received by the party against whom enforcement is sought no later than the fifth business day after such contract is made (or such other period of time as the parties may agree in writing) and the sender does not receive, on or before the third business day after such receipt (or such other period of time as the parties may agree in writing), written objection to a material term of the confirmation; for purposes of this subparagraph, a confirmation or an objection

thereto is received at the time there has been actual receipt by an individual responsible for the transaction or, if earlier, at the time there has been constructive receipt which is the time actual receipt by such an individual would have occurred if the receiving party, as an organization, has exercised reasonable diligence; and a "business day" for the purposes of this subparagraph is a day on which both parties are open and transacting business of the kind involved in that qualified financial contract which is the subject of the confirmation;

(c) The party against whom enforcement is sought admits in its pleading, testimony or otherwise in court that a contract was made; or

(d) There is a note, memorandum or other writing sufficient to indicate that a contract has been made, signed by the party against whom enforcement is sought or by its authorized agent or broker.

For purposes of this paragraph evidence of an electronic communication indicating the making therein of a contract or a confirmation, admission, note, memorandum or writing is not insufficient because it omits or incorrectly states one or more material terms agreed upon, so long as such evidence provides a reasonable basis for concluding that a contract was made.

4. For purposes of this subdivision, the tangible written text produced by telex, telefacsimile, computer retrieval or other process by which electronic signals are transmitted by telephone or otherwise shall constitute a writing and any symbol executed or adopted by a party with the present intention to authenticate a writing shall constitute a signing. The confirmation and notice of objection referred to in subparagraph (b) of paragraph three of this subdivision may

be communicated by means of telex, telefacsimile, computer or other similar process by which electronic signals are transmitted by telephone or otherwise, provided that a party claiming to have communicated in such a manner shall, unless the parties have otherwise agreed in writing, have the burden of establishing actual or constructive receipt by the other party as set forth in subparagraph (b) of paragraph three of this subdivision.

**N. Y. S. Civil Practice Laws & Rules**

**CPLR § 213.** Actions to be commenced within six years; where not otherwise provided for; on contract; on sealed instrument; on bond or note, and mortgage upon real property; by state based on misappropriation of public property; based on mistake; by corporation against director, officer or stockholder based on fraud

The following actions must be commenced within six years:

1. an action for which no limitation is specifically prescribed by law;

2. an action upon a contractual obligation or liability, express or implied, except as provided in section two hundred thirteen-a of this article or article 2 of the uniform commercial code *or article 36-B of the general business law*;

3. an action upon a sealed instrument;

4. an action upon a bond or note, the payment of which is secured by a mortgage upon real property, or upon a bond or note and mortgage so secured, or upon a mortgage of real property, or any interest therein;

5. an action by the state based upon the spoliation or other misappropriation of public property; the time within which the action must be commenced shall be computed from discovery by the state of the facts relied upon;

6. an action based upon mistake;

7. an action by or on behalf of a corporation against a present or former director, officer or stockholder for an accounting, or to procure a judgment on the ground of fraud, or to enforce a liability, penalty or forfeiture, or to recover damages for waste or for an injury to property or for an accounting in conjunction therewith.

8. an action based upon fraud; the time within which the action must be commenced shall be computed from the time the plaintiff or the person under whom he claims discovered the fraud, or could with reasonable diligence have discovered it.

**Rule 2215. Relief demanded by other than moving party**

At least three days prior to the time at which the motion is noticed to be heard, a party may serve upon the moving party a notice *of cross-motion* demanding relief, with or without supporting papers. Relief in the alternative or of several different types may be demanded; relief need not be responsive to that demanded by the moving party.

**CPLR § 2218. Trial of issue raised on motion**

The court may order that an issue of fact raised on a motion shall be separately tried by the court or a referee. **If the issue is triable of right by jury,** the court shall give the parties an opportunity to demand a jury trial of such issue. Failure to make such demand within the time limited by the court, or, if

no such time is limited, before trial begins, shall be deemed a waiver of the right to trial by jury. An order under this rule shall specify the issue to be tried.

**Rule § 3013. Particularity of statements generally**
Statements in a pleading shall be sufficiently particular to give the court and parties notice of the transactions, occurrences, or series of transactions or occurrences, intended to be proved and the material elements of each cause of action or defense.

**§ 3014. Statements**

Every pleading shall consist of plain and concise statements in consecutively numbered paragraphs. Each paragraph shall contain, as far as practicable, a single allegation. Reference to and incorporation of allegations may subsequently be by number. Prior statements in a pleading shall be deemed repeated or adopted subsequently in the same pleading whenever express repetition or adoption is unnecessary for a clear presentation of the subsequent matters. Separate causes of action or defenses shall be separately stated and numbered and may be stated regardless of consistency. Causes of action or defenses may be stated alternatively or hypothetically. A copy of any writing which is attached to a pleading is a part thereof for all purposes.

**Rule 3015. Particularity as to specific matters**

(a) Conditions precedent.
The performance or occurrence of a condition precedent in a contract need not be pleaded. A denial of performance or occurrence shall be made specifically and with particularity. In case of such denial, the party relying upon the performance or occurrence shall be required to prove on the trial only such

performance or occurrence as shall have been so specified.

(b) Corporate status.
Where any party is a corporation, the complaint shall so state and, where known, it shall specify the state, country or government by or under whose laws the party was created.

(e) License to do business.
Where the plaintiff's cause of action against a consumer arises from the plaintiff's conduct of a business which is required by state or local law to be licensed by the department of consumer affairs of the city of New York, the Suffolk county department of consumer affairs, the Westchester county department of consumer affairs/weight-measures, the county of Rockland, *the county of Putnam* or the Nassau county department of consumer affairs, the complaint shall allege, as part of the cause of action, that plaintiff is duly licensed and shall contain the name and number, if any, of such license and the governmental agency which issued such license; provided, however, that where the plaintiff does not have a license at the commencement of the action the plaintiff may, subject to the provisions of rule thirty hundred twenty-five of this article, amend the complaint with the name and number of an after-acquired license and the name of the governmental agency which issued such license or move for leave to amend the complaint in accordance with such provisions. The failure of the plaintiff to comply with this subdivision will permit the defendant to move for dismissal pursuant to paragraph seven of subdivision (a) of rule thirty-two hundred eleven of this chapter.

**§ 3018. Responsive pleadings**

(a) Denials.
A party shall deny those statements known or believed by him

to be untrue. He shall specify those statements as to the truth of which he lacks knowledge or information sufficient to form a belief and this shall have the effect of a denial. All other statements of a pleading are deemed admitted, except that where no responsive pleading is permitted they are deemed denied or avoided.

(b) Affirmative defenses
A party shall plead all matters which if not pleaded would be likely to take the adverse party by surprise or would raise issues of fact not appearing on the face of a prior pleading such as arbitration and award, collateral estoppel, culpable conduct *claimed* in diminution of damages *as set forth in article fourteen-A,* discharge in bankruptcy, facts showing illegality either by statute or common law, fraud, infancy or other disability of the party defending, payment, release, res judicata, statute of frauds, or statute of limitation. The application of this subdivision shall not be confined to the instances enumerated.

**CPLR Rule 3212.** Motion for summary judgment
(a) Time; kind of action. Any party may move for summary judgment in any action, after issue has been joined*; provided however, that the court may set a date after which no such motion may be made, such date being no earlier than thirty days after the filing of the note of issue. If no such date is set by the court, such motion shall be made no later than one hundred twenty days after the filing of the note of issue, except with leave of court on good cause shown.*

(b) Supporting proof; grounds; relief to either party. A motion for summary judgment shall be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admissions. The affidavit shall be by a person having knowledge of the facts; it shall recite all

the material facts; and it shall show that there is no defense to the cause of action or that the cause of action or defense has no merit. The motion shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party. Except as provided in subdivision (c) of this rule the motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact. If it shall appear that any party other than the moving party is entitled to a summary judgment, the court may grant such judgment without the necessity of a cross-motion.

(c) Immediate trial. If it appears that the only triable issues of fact arising on a motion for summary judgment relate to the amount or extent of damages, or if the motion is based on any of the grounds enumerated in subdivision (a) or (b) of rule 3211, the court may, when appropriate for the expeditious disposition of the controversy, order an immediate trial of such issues of fact raised by the motion, before a referee, before the court, or before the court and a jury, whichever may be proper.

(d) [Repealed]

(e) Partial summary judgment; severance. In a matrimonial action summary judgment may not be granted in favor of the non-moving party. In any other action summary judgment may be granted as to one or more causes of action, or part thereof, in favor of any one or more parties, to the extent warranted, on such terms as may be just. The court may also direct:

1. that the cause of action as to which summary judgment is granted shall be severed from any remaining cause of action;

or

2. that the entry of the summary judgment shall be held in abeyance pending the determination of any remaining cause of action.

(f) Facts unavailable to opposing party. Should it appear from affidavits submitted in opposition to the motion that facts essential to justify opposition may exist but cannot then be stated, the court may deny the motion or may order a continuance to permit affidavits to be obtained or disclosure to be had and may make such other order as may be just.

(g) Limitation of issues of fact for trial. If a motion for summary judgment is denied or is granted in part, the court, by examining the papers before it and, in the discretion of the court, by interrogating counsel, shall, if practicable, ascertain what facts are not in dispute or are incontrovertible. It shall thereupon make an order specifying such facts and they shall be deemed established for all purposes in the action. The court may make any order as may aid in the disposition of the action.

**CPLR Rule 4511.** Judicial notice of law

(a) When judicial notice shall be taken without request.

Every court shall take judicial notice without request of the common law, constitutions and public statutes of the United States and of every state, territory and jurisdiction of the United States and of the official compilation of codes, rules and regulations of the state except those that relate solely to the organization or internal management of an agency of the state and of all local laws and county acts.

(b) When judicial notice may be taken without request; when it shall be taken on request.

Every court may take judicial notice without request of private acts and resolutions of the congress of the United States and of the legislature of the state; ordinances and regulations of officers, agencies or governmental subdivisions of the state or of the United States; and the laws of foreign countries or their political subdivisions. Judicial notice shall be taken of matters specified in this subdivision if a party requests it, furnishes the court sufficient information to enable it to comply with the request, and has given each adverse party notice of his intention to request it. Notice shall be given in the pleadings or prior to the presentation of any evidence at the trial, but a court may require or permit other notice.

(c) Determination by court; review as matter of law.
Whether a matter is judicially noticed or proof is taken, every matter specified in this section shall be determined by the judge or referee, and included in his findings or charged to the jury. Such findings or charge shall be subject to review on appeal as a finding or charge on a matter of law.

(d) Evidence to be received on matter to be judicially noticed.
In considering whether a matter of law should be judicially noticed and in determining the matter of law to be judicially noticed, the court may consider any testimony, document, information or argument on the subject, whether offered by a party or discovered through its own research. Whether or not judicial notice is taken, a printed copy of a statute or other written law or a proclamation, edict, decree or ordinance by an executive contained in a book or publication, purporting to have been published by a government or commonly admitted as evidence of the existing law in the judicial tribunals of the

jurisdiction where it is in force, is prima facie evidence of such law and the unwritten or common law of a jurisdiction may be proved by witnesses or printed reports of cases of the courts of the jurisdiction.

**CPLR Rule 4518.** Business records

(a) Generally. Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence or event, shall be admissible in evidence in proof of that act, transaction, occurrence or event, if the judge finds that it was made in the regular course of any business and that it was the regular course of such business to make it, at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter. All other circumstances of the making of the memorandum or record, including lack of personal knowledge by the maker, may be proved to affect its weight, but they shall not affect its admissibility. The term business includes a business, profession, occupation and calling of every kind.

(b) Hospital bills. A hospital bill is admissible in evidence under this rule and is prima facie evidence of the facts contained, provided it bears a certification by the head of the hospital or by a responsible employee in the controller's or accounting office that the bill is correct, that each of the items was necessarily supplied and that the amount charged is reasonable. This subdivision shall not apply to any proceeding in a surrogate's court nor in any action instituted by or on behalf of a hospital to recover payment for accommodations or supplies furnished or for services rendered by or in such hospital, except that in a proceeding pursuant to section one hundred eighty-nine of the lien law to determine the validity and extent of the lien of a hospital, such certified hospital bills

are prima facie evidence of the fact of services and of the reasonableness of any charges which do not exceed the comparable charges made by the hospital in the care of workmen's compensation patients.

(c) Other records. All records, writings and other things referred to in sections 2306 and 2307 are admissible in evidence under this rule and are prima facie evidence of the facts contained, provided they bear a certification or authentication by the head of the hospital, laboratory, department or bureau of a municipal corporation or of the state, or by an employee delegated for that purpose or by a qualified physician. Where a hospital record is in the custody of a warehouse, or "warehouseman" as that term is defined by paragraph (h) of subdivision one of section 7-102 of the uniform commercial code, pursuant to a plan approved in writing by the state commissioner of health, admissibility under this subdivision may be established by a certification made by the manager of the warehouse that sets forth (i) the authority by which the record is held, including but not limited to a court order, order of the commissioner, or order or resolution of the governing body or official of the hospital, and (ii) that the record has been in the exclusive custody of such warehouse or warehousemen since its receipt from the hospital or, if another has had access to it, the name and address of such person and the date on which and the circumstances under which such access was had. Any warehouseman providing a certification as required by this subdivision shall have no liability for acts or omissions relating thereto, except for intentional misconduct, and the warehouseman is authorized to assess and collect a reasonable charge for providing the certification described by this subdivision.

(d) Any records or reports relating to the administration and

analysis of a blood genetic marker or DNA test administered pursuant to sections four hundred eighteen and five hundred thirty-two of the family court act are admissible in evidence under this rule and are prima facie evidence of the facts contained provided they bear a certification or authentication by the head of the hospital, laboratory, department or bureau of a municipal corporation or of the state or by an employee delegated for that purpose, or by a qualified physician. If such record or report relating to the administration and analysis of a blood genetic marker or DNA test or tests administered pursuant to sections four hundred eighteen and five hundred thirty-two of the family court act indicates at least a ninety-five percent probability of paternity, the admission of such record or report shall create a rebuttable presumption of paternity, and shall, if unrebutted, establish the paternity of and liability for the support of a child pursuant to articles four and five of the family court act.

(e) Notwithstanding any other provision of law, a record or report relating to the administration and analysis of a blood genetic marker or DNA test certified in accordance with subdivision (d) of this rule and administered pursuant to sections four hundred eighteen and five hundred thirty-two of the family court act is admissible in evidence under this rule without the need for foundation testimony or further proof of authenticity or accuracy unless objections to the record or report are made in writing no later than twenty days before a hearing at which the record or report may be introduced into evidence or thirty days after receipt of the test results, whichever is earlier.

(f) Notwithstanding any other provision of law, records or reports of support payments and disbursements maintained pursuant to title six-A of article three of the social services law by the department of social services or the fiscal agent

under contract to the department for the provision of centralized collection and disbursement functions are admissible in evidence under this rule, provided that they bear a certification by an official of a social services district attesting to the accuracy of the content of the record or report of support payments and that in attesting to the accuracy of the record or report such official has received confirmation from the department of social services or the fiscal agent under contract to the department for the provision of centralized collection and disbursement functions pursuant to section one hundred eleven-h of the social services law that the record or report of support payments reflects the processing of all support payments in the possession of the department or the fiscal agent as of a specified date, and that the document is a record or report of support payments maintained pursuant to title six-A of article three of the social services law. If so certified, such record or report shall be admitted into evidence under this rule without the need for additional foundation testimony. Such records shall be the basis for a permissive inference of the facts contained therein unless the trier of fact finds good cause not to draw such inference.

**Rule 5015.** Relief from judgment or order

(a) On motion. The court which rendered a judgment or order may relieve a party from it upon such terms as may be just, on motion of any interested person with such notice as the court may direct, upon the ground of:

2. newly-discovered evidence which, if introduced at the trial, would probably have produced a different result and which could not have been discovered in time to move for a new trial under section 4404; or

3. fraud, misrepresentation, or other misconduct of an adverse party; or

4. lack of jurisdiction to render the judgment or order; or

(d) Restitution. Where a judgment or order is set aside or vacated, the court may direct and enforce restitution in like manner and subject to the same conditions as where a judgment is reversed or modified on appeal.

**Rule 5224.** Subpoena; procedure

(a) Kinds and service of subpoena.
Any or all of the following kinds of subpoenas may be served:

3. an information subpoena, accompanied by a copy and original of written questions and a prepaid, addressed return envelope. Service of an information subpoena may be made by registered or certified mail, return receipt requested. Answers shall be made in writing under oath by the person upon whom served, if an individual, or by an officer, director, agent or employee having the information, if a corporation, partnership or sole proprietorship. Each question shall be answered separately and fully and each answer shall refer to the question to which it responds. Answers shall be returned together with the original of the questions within seven days after receipt.

**§ 8303-a.** [As amended, L 1986, ch 220] Costs upon frivolous claims and counterclaims in actions to recover damages for personal injury, injury to property or wrongful death [As amended, L 1986, ch 220]

(a) If in *an* action *to recover damages for personal injury, injury to property or wrongful death,* an action or claim is

commenced or continued by a plaintiff or a counterclaim, defense or cross claim is commenced or continued by a defendant that is found, at any time during the proceedings or upon judgment, to be frivolous by the court, the court shall award to the successful party costs and reasonable attorney's fees not exceeding ten thousand dollars.

(b) The costs and fees awarded under subdivision (a) of this section shall be assessed either against the party bringing the action, claim, cross claim, defense or counter-claim or against the attorney for such party, or against both, as may be determined by the court, based upon the circumstances of the case. Such costs and fees shall be in addition to any other judgment awarded to the successful party.

(c) In order to find the action, claim, counterclaim, defense or cross claim to be frivolous under subdivision (a) of this section, the court must find one or more of the following:

(i) the action, claim, counterclaim, defense or cross claim was commenced, used or continued in bad faith, solely to delay or prolong the resolution of the litigation or to harass or maliciously injure another;

(ii) the action, claim, counterclaim, defense or cross claim was commenced or continued in bad faith without any reasonable basis in law or fact and could not be supported by a good faith argument for an extension, modification or reversal of existing law. If the action, claim, counterclaim, defense or cross claim was promptly discontinued when the party or the attorney learned or should have learned that the action, claim, counterclaim, defense or cross claim lacked such a reasonable basis, the court may find that the party or the attorney did not act in bad faith.

**New York Judiciary Law**

**§ 36.** Personal assistants to judges and justices

1. Notwithstanding any other provisions of law, each justice of the supreme court may appoint and at pleasure remove one law clerk and one secretary, subject to standards and administrative policies promulgated pursuant to section twenty-eight of article six of the constitution.

2. Should a judge or justice of the unified court system cease to hold office for any reason other than expiration of his term, his personal assistants shall continue in office until a successor is appointed or elected to fill such vacancy. Until such vacancy is filled, the chief administrator of the courts shall determine the functions to be performed by such personal assistants.

**NY Jud § 140-b.** General jurisdiction of supreme court

The general jurisdiction in law and equity which the supreme court possesses under the provisions of the constitution includes all the jurisdiction which was possessed and exercised by the supreme court of the colony of New York at any time, and by the court of chancery in England on the fourth day of July, seventeen hundred seventy-six, with the exceptions, additions and limitations created and imposed by the constitution and laws of the state. Subject to those exceptions and limitations the supreme court of the state has all the powers and authority of each of those courts and may exercise them in like manner.

**§ 147-a.** Powers of justice of supreme court

Any justice of the supreme court has power to hold a special

or trial term of the supreme court in any county for the whole or any portion of the term, and to act upon any business which regularly comes before the term in which he is sitting, except where he is personally disqualified from sitting, in a particular action or special proceeding. Each justice, at all reasonable times, when not engaged in holding court, must transact such judicial business as may be done out of court.

**§ 165-b.** Power of supreme court justices in Rockland county to appoint law stenographers and typists

The justice or justices of the supreme court residing in Rockland county, or a majority of them, may appoint and at pleasure remove and prescribe the duties of a confidential law stenographer and typist, who shall receive such compensation as may be fixed by the board of supervisors of such county. Such compensation shall be a charge against such county and shall be paid by the treasurer thereof in monthly installments upon the certificate of such justice or justices, or a majority of them.

**§ 173-b.** Power of supreme court justices of the eight [eighth] judicial district to appoint a confidential law assistant to such justices

The justices of the supreme court of the eighth judicial district, or a majority of them, may appoint and at pleasure remove and prescribe the duties of a confidential law assistant to such justices. Such confidential law assistant shall be an attorney and counselor at law and shall receive such salary as shall be fixed by such justices, or a majority of them. Such salary shall be audited by the state comptroller and paid by the state department of taxation and finance in equal semi-monthly installments when certified to such comptroller

by a justice of the supreme court of the eighth judicial district. Such department shall apportion the amount of such salary among the counties of the eighth judicial district. Such counties shall reimburse the state therefor. The time and method of such apportionment and the time and method of such reimbursement shall be as specified in section seventy-four of this chapter.

**§ 197.** Appointment of confidential clerks by county judges of Kings, Queens, Erie, Monroe, Nassau, Onondaga, Rockland, Dutchess and Saint Lawrence counties and by special county judge of Erie county

Each of the county judges of the counties of Kings, Queens, Erie, Monroe, Nassau, Onondaga, Rockland, Dutchess and Saint Lawrence shall, and the special county judge of the county of Erie may, appoint and at pleasure remove, a confidential clerk. Such clerks shall be exempt from competitive examination, and their fitness and qualifications for the office shall be approved by the judge making the appointment.

**§ 251.** Clerks in courts of record within the territory of the first, second, tenth and eleventh judicial districts not to be appointed referees, receivers, or commissioners

No person holding the office of clerk, deputy clerk, special deputy clerk, assistant special deputy clerk, or assistant in the clerk's office, of a court of record within the first, second, tenth and eleventh judicial districts or territory comprising the same, shall hereafter be appointed by any court or judge, a referee, receiver or commissioner; except that a person holding such office who is an attorney in good standing admitted to practice in the state may be appointed as a referee to serve without fee where authorized by any provision of the

civil practice law and rules or any other law.

**§ 251-a.** Confidential clerks to justices of supreme court not to be appointed referees, receivers or commissioners

No person holding the office of confidential clerk or law secretary to a justice of the supreme court shall hereafter be appointed by any court or judge in any action or proceeding instituted in the supreme court, a referee, receiver or commissioner, except that in uncontested matrimonial actions, a confidential clerk or law secretary who is an attorney in good standing admitted to practice in the state may be appointed by an administrative judge to serve without fee as a referee for the purpose of hearing and reporting to the court.

**§ 487.** Misconduct by attorneys

An attorney or counselor who:

1. Is guilty of any deceit or collusion, or consents to any deceit or collusion, with intent to deceive the court or any party; or,

2. Wilfully delays his client's suit with a view to his own gain; or, wilfully receives any money or allowance for or on account of any money which he has not laid out, or becomes answerable for,

Is guilty of a misdemeanor, and in addition to the punishment prescribed therefor by the penal law, he forfeits to the party injured treble damages, to be recovered in a civil action.

**N Y Public Officers Law § 17.** Defense and indemnification of state officers and employees

1. (a) As used in this section, unless the context otherwise requires the term "employee" shall mean any person holding a position by election, appointment or employment in the service of the state, *including clinical practice pursuant to subdivision fourteen of section two hundred six of the public health law,* whether or not compensated, or a volunteer expressly authorized to participate in a state-sponsored volunteer program, but shall not include an independent contractor. The term employee shall include a former employee, his estate or judicially appointed personal representative and persons who assist the education department or the department of health as consultants or expert witnesses in the investigation or prosecution of alleged professional misconduct, licensure matters, restoration proceedings, or criminal prosecutions for unauthorized practice pursuant to title eight of the education law or title II-A of the public health law.

2. (a) Upon compliance by the employee with the provisions of subdivision four of this section, the state shall provide for the defense of the employee in any civil action or proceeding in any state or federal court arising out of any alleged act or omission which occurred or is alleged in the complaint to have occurred while the employee was acting within the scope of his public employment or duties; or which is brought to enforce a provision of section nineteen hundred eighty-one or nineteen hundred eighty-three of title forty-two of the United States code and the act or omission underlying the action occurred or is alleged in the complaint to have occurred while the employee was acting within the scope of his public employment or duties. This duty to provide for a defense shall not arise where such civil action or proceeding is brought by or on behalf of the state.

(b) Subject to the conditions set forth in paragraph (a) of this subdivision, the employee shall be entitled to be represented by the attorney general, provided, however, that the employee shall be entitled to representation by private counsel of his choice in any civil judicial proceeding *whenever the attorney general determines based upon his investigation and review of the facts and circumstances of the case that representation by the attorney general would be inappropriate,* or whenever a court of competent jurisdiction, upon appropriate motion or by a special proceeding, determines that a conflict of interest exists and that the employee is entitled to be represented by private counsel of his choice. The attorney general shall notify the employee in writing of such determination that the employee is entitled to be represented by private counsel. The attorney general may require, as a condition to payment of the fees and expenses of such representation, that appropriate groups of such employees be represented by the same counsel. If the employee or group of employees is entitled to representation by private counsel under the provisions of this section, the attorney general shall so certify to the comptroller. Reasonable attorneys' fees and litigation expenses shall be paid by the state to such private counsel from time to time during the pendency of the civil action or proceeding subject to certification that the employee is entitled to representation under the terms and conditions of this section by the head of the department, commission, division, office or agency in which such employee is employed and upon the audit and warrant of the comptroller. Any dispute with respect to representation of multiple employees by a single counsel or the amount of litigation expenses or the reasonableness of attorneys' fees shall be resolved by the court upon motion or by way of a special proceeding.

(c) Where the employee delivers process and a request for a defense to the attorney general as required by subdivision

four of this section, the attorney general shall take the necessary steps including the retention of private counsel under the terms and conditions provided in paragraph (b) of subdivision two of this section on behalf of the employee to avoid entry of a default judgment pending resolution of any question pertaining to the obligation to provide for a defense.

3. (a) The state shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in any state or federal court, or in the amount of any settlement of a claim, or shall pay such judgment or settlement; provided, that the act or omission from which such judgment or settlement arose occurred while the employee was acting within the scope of his public employment or duties; the duty to indemnify and save harmless or pay prescribed by this subdivision shall not arise where the injury or damage resulted from intentional wrongdoing on the part of the employee.

(b) An employee represented by the attorney general or by private counsel pursuant to this section shall cause to be submitted to the head of the department, commission, division, office or agency in which he is employed any proposed settlement which may be subject to indemnification or payment by the state and if not inconsistent with the provisions of this section such head of the department, commission, division, office or agency in which he is employed shall certify such settlement, and submit such settlement and certification to the attorney general. The attorney general shall review such proposed settlement as to form and amount, and shall give his approval if in his judgment the settlement is in the best interest of the state. Nothing in this subdivision shall be construed to authorize the state to indemnify and save harmless or pay an employee with respect to a settlement not so reviewed and approved by the

attorney general.

(c) Nothing in this subdivision shall authorize the state to indemnify or save harmless an employee with respect to fines or penalties, or money recovered from an employee pursuant to article seven-a of the state finance law; provided, however, that the state shall indemnify and save harmless its employees in the amount of any costs, attorneys' fees, damages, fines or penalties which may be imposed by reason of an adjudication that an employee, acting within the scope of his public employment or duties, has, without willfulness or intent on his part, violated a prior order, judgment, consent decree or stipulation of settlement entered in any court of this state or of the United States. The attorney general shall promulgate such rules and regulations as are necessary to effectuate the purposes of this subdivision.

(d) Upon entry of a final judgment against the employee, or upon the settlement of the claim, the employee shall cause to be served a copy of such judgment or settlement, personally or by certified or registered mail within thirty days of the date of entry or settlement, upon the head of the department, commission, division, office or agency in which he is employed; and if not inconsistent with the provisions of this section, such judgment or settlement shall be certified for payment by such head of the department, commission, division, office or agency. If the attorney general concurs in such certification, the judgment or settlement shall be paid upon the audit and warrant of the comptroller. On or before January fifteenth the comptroller, in consultation with the department of law and other agencies as may be appropriate, shall submit to the governor and the legislature an annual accounting of judgments, settlements, fees, and litigation expenses paid pursuant to this section during the preceding and current fiscal years. Such accounting shall include, but

not be limited to the number, type and amount of claims so paid, as well as an estimate of claims to be paid during the remainder of the current fiscal year and during the following fiscal year.

4. The duty to defend or indemnify and save harmless prescribed by this section shall be conditioned upon (i) delivery to the attorney general or an assistant attorney general at an office of the department of law in the state by the employee of the original or a copy of any summons, complaint, process, notice, demand or pleading within five days after he is served with such document, and (ii) the full cooperation of the employee in the defense of such action or proceeding and in defense of any action or proceeding against the state based upon the same act or omission, and in the prosecution of any appeal. Such delivery shall be deemed a request by the employee that the state provide for his defense pursuant to this section.

5. The benefits of this section shall inure only to employees as defined herein and shall not enlarge or diminish the rights of any other party nor shall any provision of this section be construed to affect, alter or repeal any provision of the workers' compensation law.

6. This section shall not in any way affect the obligation of any claimant to give notice to the state under section ten of the court of claims act or any other provision of law.

7. The provisions of this section shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance.

8. The provisions of this section shall apply to all actions and proceedings pending upon the effective date thereof or

thereafter instituted.

9. Except as otherwise specifically provided in this section, the provisions of this section shall not be construed in any way to impair, alter, limit, modify, abrogate or restrict any immunity available to or conferred upon any unit, entity, officer or employee of the state or any other level of government, or any right to defense and/or indemnification provided for any governmental officer or employee by, in accordance with, or by reason of, any other provision of state or federal statutory or common law.

10. If any provision of this section or the application thereof to any person or circumstance be held unconstitutional or invalid in whole or in part by any court of competent jurisdiction, such holding of unconstitutionality or invalidity shall in no way affect or impair any other provision of this section or the application of any such provision to any other person or circumstance.

11. The provisions of this section shall not apply to physicians who are subject to the provisions of the plan for the management of clinical practice income as set forth in the policies of the board of trustees, title 8, New York codes [,] [11] rules and regulations, regarding any civil action or proceeding alleging some professional malpractice in any state or federal court arising out of the physician's involvement in clinical practice as defined in that plan.

**New York State Penal Code**

**§ 105.00. Conspiracy in the sixth degree**

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A person is guilty of conspiracy in the sixth degree when, with intent that conduct constituting a crime be performed, he agrees with one or more persons to engage in or cause the performance of such conduct.

Conspiracy in the sixth degree is a class B misdemeanor.

**§ 105.05. Conspiracy in the fifth degree**

A person is guilty of conspiracy in the fifth degree when, with intent that conduct constituting:

1. a felony be performed, he agrees with one or more persons to engage in or cause the performance of such conduct; or

2. a crime be performed, he, being over eighteen years of age, agrees with one or more persons under sixteen years of age to engage in or cause the performance of such conduct.

Conspiracy in the fifth degree is a class A misdemeanor.

**§ 105.10. Conspiracy in the fourth degree**

A person is guilty of conspiracy in the fourth degree when, with intent that conduct constituting:

1. a class B or class C felony be performed, he agrees with one or more persons to engage in or cause the performance of such conduct; or

Conspiracy in the fourth degree is a class E felony.

**§ 105.15. Conspiracy in the second degree**

A person is guilty of conspiracy in the second degree when, with intent that conduct constituting a class A felony be performed, he agrees with one or more persons to engage in or cause the performance of such conduct.

Conspiracy in the second degree is a class B felony.

**§ 105.30. Conspiracy; no defense**

It is no defense to a prosecution for conspiracy that, owing to criminal irresponsibility or other legal incapacity or exemption, or to unawareness of the criminal nature of the agreement or the object conduct or of the defendant's criminal purpose or to other factors precluding the mental state required for the commission of conspiracy or the object crime, one or more of the defendant's co-conspirators could not be guilty of conspiracy or the object crime.

**Article 175.** Offenses Involving False Written Statements

**§ 175.00. Definitions of terms**

The following definitions are applicable to this article:

1. "Enterprise" means any entity of one or more persons, corporate or otherwise, public or private, engaged in business, commercial, professional, industrial, eleemosynary, social, political or governmental activity.

2. "Business record" means any writing or article, *including computer data or a computer program,* kept or maintained by an enterprise for the purpose of evidencing or reflecting its condition or activity.

3. "Written instrument" means any instrument or article, *including computer data or a computer program,* containing written or printed matter or the equivalent thereof, used for the purpose of reciting, embodying, conveying or recording information, or constituting a symbol or evidence of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

**§ 175.05. Falsifying business records in the second degree**
A person is guilty of falsifying business records in the second degree when, with intent to defraud, he:

1. Makes or causes a false entry in the business records of an enterprise; or

2. Alters, erases, obliterates, deletes, removes or destroys a true entry in the business records of an enterprise; or

3. Omits to make a true entry in the business records of an enterprise in violation of a duty to do so which he knows to be imposed upon him by law or by the nature of his position; or

4. Prevents the making of a true entry or causes the omission thereof in the business records of an enterprise.

Falsifying business records in the second degree is a class A misdemeanor.

Where justice of peace has imposed and collected fines for violations of Vehicle and Traffic Law and has wilfully failed to pay same over to state in accordance with §73 of this law, he may be prosecuted under this section. 1933 Ops Atty Gen 175.

**§ 175.10. Falsifying business records in the first degree**
A person is guilty of falsifying business records in the first degree when he commits the crime of falsifying business records in the second degree, and when his intent to defraud includes an intent to commit another crime or to aid or conceal the commission thereof.

Falsifying business records in the first degree is a class E

felony.

**§ 175.30. Offering a false instrument for filing in the second degree**

A person is guilty of offering a false instrument for filing in the second degree when, knowing that a written instrument contains a false statement or false information, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office or public servant.

Offering a false instrument for filing in the second degree is a class A misdemeanor.

**§ 175.35. Offering a false instrument for filing in the first degree**

A person is guilty of offering a false instrument for filing in the first degree when, knowing that a written instrument contains a false statement or false information, and with intent to defraud the state or any political subdivision thereof, he offers or presents it to a public office or public servant with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of such public office or public servant.

Offering a false instrument for filing in the first degree is a class E felony.

**§ 190.50. Unlawful collection practices**

A person is guilty of unlawful collection practices when, with intent to enforce a claim or judgment for money or property, he knowingly sends, mails or delivers to another person a notice, document or other instrument which has no judicial or official sanction and which in its format or appearance,

simulates a summons, complaint, court order or process, or an insignia, seal or printed form of a federal, state or local government or an instrumentality thereof, or is otherwise calculated to induce a belief that such notice, document or instrument has a judicial or official sanction.

Unlawful collection practices is a class B misdemeanor.

**§ 190.60. Scheme to defraud in the second degree**

1. A person is guilty of a scheme to defraud in the second degree when he engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud more than one person or to obtain property from more than one person by false or fraudulent pretenses, representations or promises, and so obtains property from one or more of such persons.

2. In any prosecution under this section, it shall be necessary to prove the identity of at least one person from whom the defendant so obtained property, but it shall not be necessary to prove the identity of any other intended victim.

Scheme to defraud in the second degree is a class A misdemeanor.

**§ 190.65. Scheme to defraud in the first degree**

1. A person is guilty of a scheme to defraud in the first degree when he: (a) engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud ten or more persons or to obtain property from ten or more persons by false or fraudulent pretenses, representations or promises, and so obtains property from one or more of such persons; or (b) engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud more than

one person or to obtain property from more than one person by false or fraudulent pretenses, representations or promises, and so obtains property with a value in excess of one thousand dollars from one or more such persons.

2. In any prosecution under this section, it shall be necessary to prove the identity of at least one person from whom the defendant so obtained property, but it shall not be necessary to prove the identity of any other intended victim.

Scheme to defraud in the first degree is a class E felony.

**§ 195.00. Official misconduct**

A public servant is guilty of official misconduct when, with intent to obtain a benefit or deprive another person of a benefit:

1. He commits an act relating to his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized; or

2. He knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

Official misconduct is a class A misdemeanor.

**§ 195.05. Obstructing governmental administration in the second degree**

A person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation,

physical force or interference, or by means of any independently unlawful act, or by means of interfering, whether or not physical force is involved, with radio, telephone, television or other telecommunications systems owned or operated by the state, or a county, city, town, village, fire district or emergency medical service.

Obstructing governmental administration is a class A misdemeanor.

**§ 195.07. Obstructing governmental administration in the first degree**

A person is guilty of obstructing governmental administration in the first degree when he commits the crime of obstructing governmental administration in the second degree by means of interfering with a telecommunications system thereby causing serious physical injury to another person.

Obstructing governmental administration in the first degree is a class E felony.

**§ 200.20. Rewarding official misconduct in the second degree**

A person is guilty of rewarding official misconduct in the second degree when he knowingly confers, or offers or agrees to confer, any benefit upon a public servant for having violated his duty as a public servant.

Rewarding official misconduct in the second degree is a class E felony.

**§ 200.22. Rewarding official misconduct in the first degree**

A person is guilty of rewarding official misconduct in the first

degree when he knowingly confers, or offers or agrees to confer, any benefit upon a public servant for having violated his duty as a public servant in the investigation, arrest, detention, prosecution, or incarceration of any person for the commission or alleged commission of a class A felony defined in article two hundred twenty of the penal law or the attempt to commit any such class A felony.

Rewarding official misconduct in the first degree is a class C felony.

**§ 200.25. Receiving reward for official misconduct in the second degree**

A public servant is guilty of receiving reward for official misconduct in the second degree when he solicits, accepts or agrees to accept any benefit from another person for having violated his duty as a public servant.

Receiving reward for official misconduct in the second degree is a class E felony.

**§ 200.27. Receiving reward for official misconduct in the first degree**

A public servant is guilty of receiving reward for official misconduct in the first degree when he solicits, accepts or agrees to accept any benefit from another person for having violated his duty as a public servant in the investigation, arrest, detention, prosecution, or incarceration of any person for the commission or alleged commission of a class A felony defined in article two hundred twenty of the penal law or the attempt to commit any such class A felony.

Receiving reward for official misconduct in the first degree is a class C felony.

**§ 205.50. Hindering prosecution; definition of term**

As used in sections 205.55, 205.60 and 205.65, a person "renders criminal assistance" when, with intent to prevent, hinder or delay the discovery or apprehension of, or the lodging of a criminal charge against, a person who he knows or believes has committed a crime or is being sought by law enforcement officials for the commission of a crime, or with intent to assist a person in profiting or benefitting from the commission of a crime, he:

1. Harbors or conceals such person; or

2. Warns such person of impending discovery or apprehension; or

3. Provides such person with money, transportation, weapon, disguise or other means of avoiding discovery or apprehension; or

4. Prevents or obstructs, by means of force, intimidation or deception, anyone from performing an act which might aid in the discovery or apprehension of such person or in the lodging of a criminal charge against him; or

5. Suppresses, by any act of concealment, alteration or destruction, any physical evidence which might aid in the discovery or apprehension of such person or in the lodging of a criminal charge against him; or

6. Aids such person to protect or expeditiously profit from an advantage derived from such crime.

**§ 205.55. Hindering prosecution in the third degree**

A person is guilty of hindering prosecution in the third

degree when he renders criminal assistance to a person who has committed a felony.

Hindering prosecution in the third degree is a class A misdemeanor.

**§ 205.60. Hindering prosecution in the second degree**

A person is guilty of hindering prosecution in the second degree when he renders criminal assistance to a person who has committed a class B or class C felony.

Hindering prosecution in the second degree is a class E felony.

**§ 205.65. Hindering prosecution in the first degree**

A person is guilty of hindering prosecution in the first degree when he renders criminal assistance to a person who has committed a class A felony, knowing or believing that such person has engaged in conduct constituting a class A felony.

Hindering prosecution in the first degree is a class D felony.

**§ 210.00. Perjury and related offenses; definitions of terms**

The following definitions are applicable to this article:

1. "Oath" includes an affirmation and every other mode authorized by law of attesting to the truth of that which is stated.

2. "Swear" means to state under oath.

3. "Testimony" means an oral statement made under oath in a proceeding before any court, body, agency, public servant or other person authorized by law to conduct such proceeding

and to administer the oath or cause it to be administered.

4. "Oath required by law." An affidavit, deposition or other subscribed written instrument is one for which an "oath is required by law" when, absent an oath or swearing thereto, it does not or would not, according to statute or appropriate regulatory provisions, have legal efficacy in a court of law or before any public or governmental body, agency or public servant to whom it is or might be submitted.

5. "Swear falsely." A person "swears falsely" when he intentionally makes a false statement which he does not believe to be true (a) while giving testimony, or (b) under oath in a subscribed written instrument. A false swearing in a subscribed written instrument shall not be deemed complete until the instrument is delivered by its subscriber, or by someone acting in his behalf, to another person with intent that it be uttered or published as true.

6. "Attesting officer" means any notary public or other person authorized by law to administer oaths in connection with affidavits, depositions and other subscribed written instruments, and to certify that the subscriber of such an instrument has appeared before him and has sworn to the truth of the contents thereof.

7. "Jurat" means a clause wherein an attesting officer certifies, among other matters, that the subscriber has appeared before him and sworn to the truth of the contents thereof.

**§ 210.05. Perjury in the third degree**

A person is guilty of perjury in the third degree when he swears falsely.

Perjury in the third degree is a class A misdemeanor.

**§ 210.10. Perjury in the second degree**

A person is guilty of perjury in the second degree when he swears falsely and when his false statement is (a) made in a subscribed written instrument for which an oath is required by law, and (b) made with intent to mislead a public servant in the performance of his official functions, and (c) material to the action, proceeding or matter involved.

Perjury in the second degree is a class E felony.

**§ 210.15. Perjury in the first degree**

A person is guilty of perjury in the first degree when he swears falsely and when his false statement (a) consists of testimony, and (b) is material to the action, proceeding or matter in which it is made.

Perjury in the first degree is a class D felony.

**§ 210.20. Perjury; pleading and proof where inconsistent statements involved**

Where a person has made two statements under oath which are inconsistent to the degree that one of them is necessarily false, where the circumstances are such that each statement, if false, is perjuriously so, and where each statement was made within the jurisdiction of this state and within the period of the statute of limitations for the crime charged, the inability of the people to establish specifically which of the two statements is the false one does not preclude a prosecution for perjury, and such prosecution may be conducted as follows:

1. The indictment or information may set forth the two statements and, without designating either, charge that one of

them is false and perjuriously made.

2. The falsity of one or the other of the two statements may be established by proof or a showing of their irreconcilable inconsistency.

3. The highest degree of perjury of which the defendant may be convicted is determined by hypothetically assuming each statement to be false and perjurious. If under such circumstances perjury of the same degree would be established by the making of each statement, the defendant may be convicted of that degree at most. If perjury of different degrees would be established by the making of the two statements, the defendant may be convicted of the lesser degree at most.

**§ 210.35. Making an apparently sworn false statement in the second degree**

A person is guilty of making an apparently sworn false statement in the second degree when (a) he subscribes a written instrument knowing that it contains a statement which is in fact false and which he does not believe to be true, and (b) he intends or believes that such instrument will be uttered or delivered with a jurat affixed thereto, and (c) such instrument is uttered or delivered with a jurat affixed thereto.

Making an apparently sworn false statement in the second degree is a class A misdemeanor.

**§ 210.40. Making an apparently sworn false statement in the first degree**

A person is guilty of making an apparently sworn false statement in the first degree when he commits the crime of making an apparently sworn false statement in the second degree, and when (a) the written instrument involved is one

for which an oath is required by law, and (b) the false statement contained therein is made with intent to mislead a public servant in the performance of his official functions, and (c) such false statement is material to the action, proceeding or matter involved.

Making an apparently sworn false statement in the first degree is a class E felony.

**§ 210.45. Making a punishable false written statement** A person is guilty of making a punishable false written statement when he knowingly makes a false statement, which he does not believe to be true, in a written instrument bearing a legally authorized form notice to the effect that false statements made therein are punishable.

Making a punishable false written statement is a class A misdemeanor.

**Article 215. Other Offenses Relating to Judicial and Other Proceedings**

**§ 215.35. Tampering with physical evidence; definitions of terms** The following definitions are applicable to section 215.40:

1. "Physical evidence" means any article, object, document, record or other thing of physical substance which is or is about to be produced or used as evidence in an official proceeding.

2. "Official proceeding" means any action or proceeding conducted by or before a legally constituted judicial, legislative, administrative or other governmental agency or official, in which evidence may properly be received.

**§ 215.40. Tampering with physical evidence**

A person is guilty of tampering with physical evidence when:

1. With intent that it be used or introduced in an official proceeding or a prospective official proceeding, he (a) knowingly makes, devises or prepares false physical evidence, or (b) produces or offers such evidence at such a proceeding knowing it to be false; or

2. Believing that certain physical evidence is about to be produced or used in an official proceeding or a prospective official proceeding, and intending to prevent such production or use, he suppresses it by any act of concealment, alteration or destruction, or by employing force, intimidation or deception against any person.

Tampering with physical evidence is a class E felony.

"Forgery" is not an essential element in establishing violation of this section by one who, charged with forging a particular check, is accused of destroying the instrument so that it could not be used as evidence against him, and defendant's prosecution for violating this section could accordingly not be considered as barred as subjecting him to double jeopardy because the forgery charges against him had been dismissed. People v Trudeau (1963) 40 Misc 2d 854, 243 NYS2d 877.

**§ 215.45. Compounding a crime**

1. A person is guilty of compounding a crime when:

(a) He solicits, accepts or agrees to accept any benefit upon an agreement or understanding that he will refrain from initiating a prosecution for a crime; or

(b) He confers, or offers or agrees to confer, any benefit upon

another person upon an agreement or understanding that such other person will refrain from initiating a prosecution for a crime.

2. In any prosecution under this section, it is an affirmative defense that the benefit did not exceed an amount which the defendant reasonably believed to be due as restitution or indemnification for harm caused by the crime.

Compounding a crime is a class A misdemeanor.

**§ 460.20. Enterprise corruption**

1. A person is guilty of enterprise corruption when, having knowledge of the existence of a criminal enterprise and the nature of its activities, and being employed by or associated with such enterprise, he:

(a) intentionally conducts or participates in the affairs of an enterprise by participating in a pattern of criminal activity; or

(b) intentionally acquires or maintains any interest in or control of an enterprise by participating in a pattern of criminal activity; or

(c) participates in a pattern of criminal activity and knowingly invests any proceeds derived from that conduct, or any proceeds derived from the investment or use of those proceeds, in an enterprise.

2. For purposes of this section, a person participates in a pattern of criminal activity when, with intent to participate in or advance the affairs of the criminal enterprise, he engages in conduct constituting, or, is criminally liable for pursuant to section 20.00 of this chapter, at least three of the criminal acts included in the pattern, provided that:

(a) Two of his acts are felonies other than conspiracy;

(b) Two of his acts, one of which is a felony, occurred within five years of the commencement of the criminal action; and

(c) Each of his acts occurred within three years of a prior act.

3. For purposes of this section, the enterprise corrupted in violation of subdivision one of this section need not be the criminal enterprise by which the person is employed or with which he is associated, and may be a legitimate enterprise.

Enterprise corruption is a class B felony.

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**Additional Federal and N. Y. State Laws and N. Y. State Rules**

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**28 USC Rule 201** Judicial Notice of Adjudicative Facts

(a) Scope of rule. - This rule governs only judicial notice of adjudicative facts.

(b) Kinds of facts. - A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When discretionary. - A court may take judicial notice, whether requested or not.

(d) When mandatory. - A court shall take judicial notice if

requested by a party and supplied with the necessary information.

(e) Opportunity to be heard. - A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of taking notice. - Judicial notice may be taken at any stage of the proceeding.

**28 USC Rule 302** Applicability of State Law in Civil Actions and Proceedings

In civil actions and proceedings, the effect of a presumption respecting a fact which is an element of a claim or defense as to
which State law supplies the rule of decision is determined in accordance with State law.

**28 USC Rule 613** Prior Statements of Witnesses

(a) Examining witness concerning prior statement. -
In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request the same shall be shown or disclosed to opposing counsel.

(b) Extrinsic evidence of prior inconsistent statement of witness. - Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposite

party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require. This provision does not apply to admissions of a party-opponent as defined in rule 801(d)(2).

**28 USCS § 712** Law clerks and secretaries

Circuit judges may appoint necessary law clerks and secret--aries. A law clerk appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5, unless specifically included by the appointing judge or by local rule of court.

**28 USCS § 715** Staff attorneys and technical assistants

(a) The chief judge of each court of appeals, with the approval of the court, may appoint a senior staff attorney, who shall be subject to removal by the chief judge with the approval of the court.

(b) The senior staff attorney, with the approval of the chief judge, may appoint necessary staff attorneys and secretarial and clerical employees in such numbers as the Director of the Administrative Office of the United States Courts may approve, but in no event may the number of staff attorneys exceed the number of positions expressly authorized in an annual appropriation Act. The senior staff attorney may remove such staff attorneys and secretarial and clerical employees with the approval of the chief judge.

(c) The chief judge of the Court of Appeals for the Federal Circuit, with the approval of the court, may appoint a senior technical assistant who shall be subject to removal by the chief judge with the approval of the court.

(d) The senior technical assistant, with the approval of the court, may appoint necessary technical assistants in such number as the Director of the Administrative Office of the United States Courts may approve, but in no event may the number of technical assistants in the Court of Appeals for the Federal Circuit exceed the number of circuit judges in regular active service within such circuit. The senior technical assistant may remove such technical assistants with the approval of the court.

**22 NYCRR § 202.8. Motion procedure**

(a) All motions shall be returnable before the assigned judge, and all papers shall be filed with the court on or before the return date.

(b) Special procedure for unassigned cases. If a case has not been assigned to a judge, the motion shall be made returnable before the court, and a copy of the moving papers, together with a request for judicial intervention, shall be filed with the court, with proof of service upon all other parties, where required by section 202.6, within five days of service upon the other parties. The moving party shall give written notice of the index number to all other parties immediately after filing of the papers. Copies of all responding papers shall be submitted to the court, with proof of service and with the index number set forth in the papers, on or before the return date. The case shall be assigned to a judge as soon as practicable after the filing of the request for judicial intervention pursuant to section 202.6 of this Part, but in no event later than the return date. After assignment to the judge, the court shall provide for appropriate notice to the parties of the name of the assigned judge. Motion papers noticed to be heard in a county other than the county where the venue of the action has been placed by the plaintiff shall

be assigned to a judge in accordance with procedures established by the Chief Administrator.

(c) The moving party shall serve copies of all affidavits and briefs upon all other parties at the time of service of the notice of motion. The answering party shall serve copies of all affidavits and briefs as required by CPLR 2214. Affidavits shall be for a statement of the relevant facts, and briefs shall be for a statement of the relevant law.

(d) Motion papers received by the clerk of the court on or before the return date shall be deemed submitted as of the return date. The assigned judge, in his or her discretion or at the request of a party, thereafter may determine that any motion be orally argued and may fix a time for oral argument. A party requesting oral argument shall set forth such request in its notice of motion or in its order to show cause or on the first page of the answering papers, as the case may be. Where all parties to a motion request oral argument, oral argument shall be granted unless the court shall determine it to be unnecessary. Where a motion is brought on by order to show cause, the court may set forth in the order that oral argument is required on the return date of the motion.

(e) (1) Stipulations of adjournment of the return date made by the parties shall be in writing and shall be submitted to the assigned judge. Such stipulation shall be effective unless the court otherwise directs. No more than three stipulated adjournments for an aggregate period of 60 days shall be submitted without prior permission of the court. (2) Absent agreement by the parties, a request by any party for an adjournment shall be submitted in writing, upon notice to the other party, to the assigned judge on or before the return date. The court will notify the requesting party whether the adjournment has been granted.

(f) Where the motion relates to disclosure or to a bill of particulars, and a preliminary conference has not been held, the court shall notify all parties of a scheduled date to appear for a preliminary conference, which shall be not more than 45 days from the return date of the motion unless the court orders otherwise, and a form of a stipulation and order, prescribed by the Chief Administrator of the Courts, shall be made available which the parties may sign, agreeing to a timetable which shall provide for completion of disclosure within 12 months, and for a resolution of any other issues raised by the motion. If all parties sign the form and return it to the court before the return date of the motion, such form shall be "so ordered" by the court, and the motion shall be deemed withdrawn. If such stipulation is not returned by all parties, the conference shall be held on the assigned date. Issues raised by the motion and not resolved at the conference shall be determined by the court.

(g) Unless the circumstances require settlement of an order, a judge shall incorporate into the decision an order effecting the relief specified in the decision.

**22 NYCRR § 202.48.**
**Submission of orders, judgments and decrees for signature**

(a) Proposed orders or judgments, with proof of service on all parties where the order is directed to be settled or submitted on notice, must be submitted for signature, unless otherwise directed by the court, within 60 days after the signing and filing of the decision directing that the order be settled or submitted.

(b) Failure to submit the order or judgment timely shall be

deemed an abandonment of the motion or action, unless for good cause shown.

**General Obligation Law § 5-332.**

Unsolicited and voluntarily sent merchandise deemed unconditional gift

1. No person, firm, partnership, association or corporation, or agent or employee thereof, shall, in any manner, or by any means, offer for sale goods, wares, or merchandise, where the offer includes the voluntary and unsolicited sending of such goods, wares, or merchandise not actually ordered or requested by the recipient, either orally or in writing. The receipt of any such goods, wares, or merchandise shall for all purposes be deemed an unconditional gift to the recipient who may use or dispose of such goods, wares, or merchandise in any manner he sees fit without any obligation on his part to the sender.

If after any such receipt deemed to be an unconditional gift under this section, the sender continues to send bill statements or requests for payment with respect thereto, an action may be brought by the recipient to enjoin such conduct, in which action there may also be awarded reasonable attorney's fees and costs to the prevailing party.

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**Following Cited cases have been used in lower Court Proceedings, in both cases [ not necessarily in each case ] at different stage of proceedings.**

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